EXERCISES

Fortieth Anniversary

Statehood of Oregon

FEBRUARY 14, 1899

FORTIETH ANNIVERSARY

OF THE

STATEHOOD OF OREGON

EXERCISES BEFORE THE LEGISLATIVE ASSEMBLY
AT SALEM, OREGON

FEBRUARY 14, 1899.

SALEM, OREGON
W. H. LEEDS, STATE PRINTER
1899

FORTIETH ANNIVERSARY

OF THE

STATEHOOD OF OREGON.

On the twenty-sixth day of September, 1898, the first day of the special session of the twentieth legislative assembly, Hon. J. Thorburn Ross, representative from Multnomah county, introduced the following joint resolution:—

"Whereas, there occurs in 1899 the fortieth anniversary of the admission of Oregon as a state, and the semi-centennial anniversary of the extension of the laws of the United States over the Oregon country; and

"Whereas, the appropriate observance of such anniversary is conducive to creating and enlightening a true commonwealth spirit, fostering the zealous study of its history and institutions by its people; therefore, be it

"*Resolved*, That the speaker of the house appoint a committee of three, who, with two appointed by the senate, shall constitute a joint committee to arrange for appropriate exercises by the senate and house of representatives of the legislature of Oregon, assembled in joint assembly on the fourteenth day of February, 1899; and further, be it

"*Resolved*, That the governor be requested to appoint a committee of arrangements for the celebration of the semi-centennial anniversary to be held at Portland, Oregon, on June 15, 1899."

The resolution was adopted by the house October 3, 1898, and by the senate on the same day. The speaker appointed as members of the committee on the part of the house Representatives J. Thorburn Ross, of Multnomah, W. L. Cummings, of Marion, and W. E. Grace, of Baker. The president appointed on the part of the senate Senators W. Kuykendall, of Lane, and John Michell, of Wasco.

Pursuant to these preliminary steps, the committee, during the early days of the regular legislative session which opened January 9, 1899, proceeded with the arrangements, the speakers hereafter mentioned having been previously secured and requested to prepare addresses, so that when February 14th arrived, the fortieth anniversary of Oregon's natal day, the preparations were completed.

A temporary stage had been erected in the hall of representatives, west from the speaker's desk, to be occupied by the large orchestra and the choral society. The entire accommodations of the capitol were brought into service, and every available space in the large chamber was occupied by patriotic humanity, paying its respects to the occasion.

The Gesner orchestra, a Salem company under the leadership of Roy Gesner, a native of Marion county, furnished exceptionally fine music, and the Salem choral union, consisting of some fifty voices, under the direction of Prof. Francesco Seley, rendered the vocal chorus selections in an inspiring manner. Following is a formal statement of the entire programme as announced and faithfully carried out:—

MORNING SESSION.

Music - - - - - - - - - - - - - - - - - -
Gesner Orchestra.

Introductory remarks by chairman - - - - - - - - - -
Gov. T. T. Geer.

Music - - - - - - - - - - - - - "Peerless Oregon"
Salem Choral Society.

Address - - - - - - - - - - "The Judiciary of Oregon"
Ex-Gov. W. P. Lord.

Solo - - - - - - - - - - - - - "Viva l'America"
Mrs. Hallie Parrish-Hinges.

Address - - "The Relations of the Legislature to the Constitution"
Hon. L. B. Cox.

Music - - - - - - - - - - - - - - - "America"
Salem Choral Society.

Music - - - - - - - - - - - - - - - - - -
Gesner Orchestra.

AFTERNOON SESSION.

Music - - - - - - - - - - - - - - - - - -
Gesner Orchestra.

Music - - - - - - - - - - - "To Thee, O Country"
Salem Choral Society.

Occasional address - - - - - - - - - - - - - - -
Hon. Geo. H. Williams.

Solo - - - - - - - - - - "The Sword of Bunker Hill"
Mrs. Hallie Parrish-Hinges.

Address - "The Influence of Pioneer Women in the Making of Oregon"
Mrs. Abigail Scott Duniway.

Solo - - - - - - - - - - - "The Two Grenadiers"
W. P. Babcock.

Solo - - - - - - - - "Columbia, the Gem of the Ocean"
Mrs. Hallie Parrish-Hinges and Salem Choral Society.

Music - - - - - - - - - - - - - - - - - -
Gesner Orchestra.

Mrs. Hallie Parrish-Hinges, whose charming singing thrilled the vast audience and could be heard distinctly throughout the several floors of the great building, is a granddaughter of the distinguished pioneer missionary, Rev. J. L. Parrish, and was born in the city of Salem, facts which added to the pride of the assembled multitude and enhanced the pleasure of hearing Oregon's prima donna. Mr. Babcock, the other soloist, is a native of Salem and the son of a respected war veteran, now deceased, Capt. F. J. Babcock.

The musical composition, "Peerless Oregon," which was beautifully rendered by the choral union, was the product—words and music—of an Oregon boy, Clifford Kantner, son of Rev. Dr. W. C. Kantner, pastor of the first Congregational church of Salem.

No mention is necessary in these explanatory remarks of the distinguished speakers of the day. They are known and honored at every fireside in Oregon, and all of them have honorable fame throughout the entire nation.

Hon. T. T. Geer is a native of Marion county's fertile hills, which he has tilled during a lifetime of a practical farmer's

trials, labors and successes. He has been many times honored by the people, the latest instance being his election to the office of governor by the heaviest vote ever given to any man in the state. He is a young man yet—born in March, 1851.

Hon. William P. Lord, with a record of bravery and noble service in the civil war, wherein he served as major, came to Oregon from his native state of Delaware in 1868, and has since that time occupied an honored place among its ablest and most trusted public men, especially as a jurist. He served fourteen years on the supreme bench of the state, and was taken therefrom and placed for four years in the executive chair, which he vacated a few weeks previous to this celebration. His home is in Salem.

Hon. L. B. Cox is an honored and distinguished member of the Portland bar—one of the few who refuse to be lured from the honors of high rank in his profession by the temptation of political place or preferment.

Hon. George H. Williams, of Portland, has been a prominent part of the public life and history of the state of Oregon, and of the nation, for so long that his name is a household word. In the territorial days of Oregon he served as its chief justice; he was one of the makers of the state constitution; he has been state senator, United States senator, United States attorney-general in President Grant's cabinet, and has held all the high places of responsibility and honor to which a devoted people could elect a man revered, esteemed and trusted. He is still vigorous in body and mind, and his hold upon public confidence is unimpaired.

Mrs. Abigail Scott Duniway is known throughout the nation as perhaps the ablest champion now living of the claims of woman for equal political rights. Her voice and pen have been always eloquent and powerful in any cause in which they were engaged, and many a foe has keenly regretted having called forth her batteries of reasoning, ridicule and retributive castigation. Mrs. Duniway is a noble woman, of whom Oregon is justly proud.

The contributions of all these to the history and legal lore of Oregon on this memorable occasion will be found in the accompanying pages.

The historical reminiscences of Judge Williams recite the personnel of the early official rosters and legislative assemblies of the state and territory, so it may not be out of place to insert here a list of those occupying the official positions at the time the fortieth anniversary of statehood was celebrated. They are as follows: —

EXECUTIVE AND DEPARTMENTAL.

Governor — T. T. Geer, of Marion county.

Secretary of state — F. I. Dunbar, of Clatsop county.

Treasurer of state — Charles S. Moore, of Klamath county.

Superintendent of public instruction — J. H. Ackerman, of Multnomah county.

State printer — W. H. Leeds, of Jackson county.

Attorney-general — D. R. N. Blackburn, of Linn county.

Justices of supreme court — Charles E. Wolverton, of Linn county, chief justice; R. S. Bean, of Lane county; F. A. Moore, of Columbia county.

LEGISLATIVE ASSEMBLY.

SENATE.

T. C. Taylor, President.

Columbia, Washington and Tillamook — G. W. Patterson.

Washington — E. W. Haines.

Coos, Curry and Josephine — C. E. Harmon.

Crook, Klamath and Lake — Bernard Daly.

Baker and Malheur — William Smith.

Benton and Lincoln — John D. Daly.

Clackamas — George C. Brownell.

Clackamas and Marion — L. L. Porter.

Clatsop — C. W. Fulton.

Douglas—A. W. Reed.
Gilliam, Sherman and Wasco—E. B. Dufur.
Grant, Harney and Morrow—J. W. Morrow.
Jackson—Theodore Cameron.
Lane—I. D. Driver, W. Kuykendall.
Linn—J. Clem, P. R. Kelly.
Marion—L. J. Adams, N. H. Looney.
Multnomah—George W. Bates, J. E. Haseltine, S. E. Josephi, Donald Mackay, Ben. Selling.
Polk—B. F. Mulkey.
Sherman and Wasco—John Michell.
Umatilla—George W. Proebstel.
Umatilla and Union—T. C. Taylor (president).
Union and Wallowa—Justus Wade.
Yamhill—W. A. Howe.

HOUSE.

E. V. CARTER, Speaker.

Baker—William E. Grace.
Benton—R. J. Nichols.
Benton and Lincoln—G. E. Davis.
Clackamas—George Knight, J. L. Kruse, Alex. Thompson.
Clatsop—C. J. Curtis, Johan E. Young.
Columbia—Dr. J. E. Hall.
Coos—George P. Topping.
Coos and Curry—E. S. Platts.
Crook—J. N. Williamson.
Douglas—James W. Conn, W. W. Wilson, G. W. Wonacott.
Gilliam—S. G. Hawson.
Grant and Harney—R. N. Donnelly.
Jackson—E. V. Carter (speaker), E. A. Sherwin, Matthew Stewart.
Josephine—James W. Virtue.
Klamath and Lake—W. A. Massingill.
Lane—F. M. Brattain, W. F. Gray, Ivan McQueen.
Linn—D. M. Jones, H. M. Palmer, J. J. Whitney.
Malheur—J. R. Blackaby.

Marion—William L. Cummings, E. H. Flagg, Abner Lewis, John McCourt, J. W. McCulloch.

Morrow—E. L. Freeland.

Multnomah—J. C. Bayer, S. C. Beach, S. Farrell, George H. Hill, Peter Hobkirk, R. E. Moody, George T. Myers, J. T. Ross, J. T. Whalley.

Polk—N. F. Gregg, J. B. Stump.

Sherman and Wasco—J. W. Morton, A. S. Roberts.

Tillamook and Yamhill—J. W. Maxwell.

Umatilla—L. B. Reeder, J. E. Smith, A. D. Stillman.

Union—D. A. McAlister, F. S. Stanley.

Wallowa—Peter Fordney.

Washington—Abner Briggs, G. W. Marsh, J. R. C. Thompson.

Yamhill—Clarence Butt, E. F. Lamson.

All of these officials were present and participated in the pleasures of the celebration. Occupying seats upon the platform were the following pioneers, notable in the history of Oregon: Judge Ira F. M. Butler, of Monmouth, Polk county, now nearly 87 years old, who was a member of the territorial legislature elected in 1854, also a member and speaker of the house elected in 1857, the last territorial legislature and, again a member, in the first state legislature, in 1860.

S. R. Scott, of Marion, a member of one of the earliest legislative sessions of the state.

Cyrus H. Walker, of Washington county, the first, and Capt. J. H. D. Gray, of Clatsop, the second, white child born west of the Rocky mountains.

Thus was rounded out the first forty years of statehood of the region known to many of the ablest of our national legislators of seventy years ago only as a distant, inaccessible desert, devoid of hopeful expectation and unworthy of serious consideration as an addition to the public domain of the United States. Its history, as recorded by the speakers of the day, is one of

which its people can well be proud — proud of the advancement it has made along all the lines of desirable progress, sometimes against adverse circumstances, but ever onward and upward, until Oregon's position today among the sisterhood of states commands respectful consideration, politically and commercially.

Guided by the same wise course followed by the sturdy pioneers who carved the way, there is every reason to hope that its career of progress and prosperity will be much more marked in the future than in the past, and that when the young men and women who rejoice and are glad over the festivities of today shall become the sires and matrons of a quarter-century hence, they will have seen Oregon's resources developed, her manufacturing and commercial possibilities wrought out to legitimate results, her lands well settled, fully cultivated and supporting a happy population of patriotic American people, the peer of mankind's purest and best, and with no superiors in the broad dominions over which by that time the starry banner of freedom will float, gloriously and triumphantly.

THE JUDICIARY OF OREGON.

BY GOV. WILLIAM P. LORD.

The compliment of an invitation to deliver an address, this the fortieth anniversary of our statehood, on the subject of our judiciary, is a distinction that I could not find it in my heart to decline, though its preparation would necessarily consume some time I could illy afford to spare, and put me to some personal inconvenience I should have preferred to avoid, and what is of more concern to me, it might put in peril the little reputation I hope to retain, to meet the expectations of this occasion, for I am vain enough to regard the part assigned to me as a high honor, worthy to employ the best talents, and as marked evidence of your distinguished favor and good will.

Before I can reach, in an orderly and satisfactory way, the subject which has been selected for me to discuss, it will require some preliminary observations on the character of the settlers of our state, the nature of the conditions which confronted them, and the necessity of establishing some form of government that should possess the usual powers of sovereignty for the protection of life and property and the maintenance of public order. The occasion which has called us together is the commemoration of the fortieth anniversary of the admission of our state into the union. It is an event of more than ordinary importance, and one in which we feel more than a passing interest. It marks a period when, looking backward, we can review the successive causes which have conduced to advance our state to its present prosperous condition and proud eminence, or, looking forward, we may see, as with prophetic vision on the canvas of time, the splendid future which awaits its growth and development.

Among the causes which I count as paramount, contributing to make our state great and prosperous as a free commonwealth, and enriching its history with heroic deeds and victories won for constitutional liberty, is the rugged virtue of our pioneer fathers—their unflagging energy, invincible will, indomitable courage, intelligent discretion and inveterate hatred of all forms of tyranny. No arrogant tyrant, like Louis XIV, could have sent them cowering before his royal displeasure, as he did his servile parliament, with the declaration "I am the state." With courageous hearts, they would have answered, with their rifles in their hands, "we are the state." They would have taught him, as all tyrants should be taught, who dispute man's inalienable right to life, liberty and the pursuit of happiness, that the people are sovereign and that all just powers of government are derived from them and founded upon their consent. History, indeed,

furnishes no example of founders of states, or colonies, who braved greater dangers or overcame mightier obstacles, who endured more privations or worse hardships, who exhibited a higher devotion to duty or stronger love of liberty, than our pioneer fathers in their emigration to and settlement of and building up of Oregon. They had come hither not in search of gold, or the mere pursuit of wealth, with the expectation, when acquired, of returning to the seats of civilization to enjoy it, or, perhaps, to spend it in idle pleasures or degrading pursuits; but they had come to found homes, to convert the waste places into prosperous farms and the seats of thriving villages, to build schoolhouses and churches and prepare the way for the coming state. It is well to note that at this time the Oregon territory was without political autonomy, and by treaty subject to joint occupation of the United States and Great Britain. Population was sparse and settlements were widely scattered, and over the territory British interests largely predominated. There was no regular government entrusted with the attributes of sovereign powers to secure private rights or maintain public order. In the nature of things disputes and disagreements would arise, liable, at times, to lead to violence, or even bloodshed, and from the necessity of the case there could be no security for individual liberty or the right of private property, unless some form of government could be established, having tribunals invested with authority to compel their peaceful settlement. Under these circumstances, and to conserve these ends, our pioneer fathers, with that strong love of liberty and justice which is the marked characteristic of the Anglo-Saxon race, established what is generally known as the provisional government of Oregon. Paradoxical as it may seem, the setting up of this government (the territory then being under joint occupancy) was a violation of treaty provisions and a usurpation of authority; and yet this government, without legal right, was so admirably constituted for dispensing justice, preserving social order and conserving the public good, that it commanded general respect and almost universal loyalty, thus assuring its stability at the start, to serve the public exigency for which it stood sponsor. This general acceptance of the government and acquiescence in its authority established the jurisdiction of its courts and clothed their ministerial officers with authority to enforce its judgments. Thus was inaugurated the judiciary of Oregon as a coördinate branch of the provisional government. In discharging the high duties confided to them, the judges acted with the deliberation and solemnity suited to the dignity of the judicial office and dispensed justice with promptness and impartiality. Wrongs were redressed, trespasses upon person or property were punished and restrained, titles were protected, contracts enforced and public order maintained.

In all states, and especially in all free governments, the judiciary have more to do with the everyday affairs of life, and approach more nearly to the business and domestic concerns of the people, than any other department of government. The courts are constantly brought in contact with every

condition of life and its business and domestic relations. Their officers often perform the ceremony of marriage, and always render the decree for its dissolution; they settle the estates of decedents, and appoint guardians for wards; they inquire into the legal relations of parties and determine their rights and duties; they enforce every form of legal obligation, whether arising from breach of contract or tort; they exercise all those equitable powers for the prevention of fraud, the correction of mistakes, the marshalling of securities, the establishing of trusts and abating the rigor and harshness of the common law. It is doubtful whether the constitutions of the different states, or in fact of any state, furnish a better model for free governments than the declaration of principles constituting the charter of the provisional government of Oregon.

From the tutelage of that period Oregon passed to the territorial government organized under the act of congress, and so remained until it became a state. During this interval our judiciary presents an array of illustrious names that have added renown to our state, and gained celebrity for their owners. There is the learned and accomplished Pratt, fertile in expedients and ready with the pen; the irascible but profound Strong, endowed with a mind of great strength and extraordinary celerity; the intellectual, studious and dignified Deady, whose opinions evince much care in their preparation, great research and profound legal acumen; the capable and attractive Olney, whose feeble health greatly handicapped his usefulness; the wise and clear-sighted Boise, whose mental processes are quick, direct and logical; and last, but not least, the able, talented and eloquent Williams, whose distinguished career on the bench of the territory and in the senate of the United States, as a member of the high joint commission for the settlement of the Alabama claims, and as attorney-general of the United States, bear testimony to his judicial abilities and his wise statesmanship, to his diplomatic talents and his comprehensive knowledge of legal principles and their practical application to the affairs of men.

It was fortunate for the territory to have such able and upright judges to preside in their courts and vindicate the majesty of violated law by the justice of their judgments, whether in condemnation of public wrongs, or in defense of private rights, for the effect of right judicial action is to tranquilize society and induce orderly conditions, always so essential to human improvement, real progress and material prosperity, thereby inculcating the virtue of obedience and the benefits and advantages to be derived from a government regulated by law. No fact is better attested in the experience of mankind than that a properly constituted judiciary, faithfully and impartially discharging their sacred trust, have contributed more to the stability of government and the happiness and welfare of their peoples than all other departments. And, what is more to the same purpose, the judiciary — to their credit, be it said — have committed fewer encroachments on the rights and liberties of the people than either of the other branches of

government. Judicial duty, well and rightly performed, is not only charged with manifold blessings to the community, but its tendency is to inculcate in the mind of the judge the virtue of deliberation and firmness, of independence of character and loyalty to constitutional principles. A good judge is always a brave man and a patriot, loyal to duty and steadfast of character. He is compelled by the nature of his duties to deal with society individually as well as collectively. The judgments and processes of his office affect every phase of human activity and include within their scope the suppression of vice and the punishment of crime, the checking of fraud and upholding fair dealing, the protection of industry and security to labor of its just rewards, the defense of the social organization from the encroachments of arbitrary power, and the maintenance of constitutional franchises.

It was natural as well as reasonable to suppose that the Oregon territory, with its vast resources and natural advantages, under a government whose justice was administered by capable and wise judges, would already bear evidence of social progress, private enterprise and public spirit. Such was the fact. The country steadily grew in population and wealth, farms increased in number and in the value of their products, occupations became more numerous and various, the professions offered greater inducements to ambition and preferment, and business was stimulated to greater activity and offered profitable investment to capital. Roads were constructed, schoolhouses built and churches erected, and thriving towns and villages began to dot the land. Life and activity, business, energy and thrift were everywhere manifest.

The nucleus of a state was rapidly forming, and the wise men of the land saw in the signs of the times the star of Oregon rising in the firmament of our union. The transition of the territory into a state measured little over a decade. A convention was called, and delegates elected to draft a constitution. It was composed of sixty members, one fourth of whom belonged to the profession of law, and the other three fourths to various other occupations. No body of men could be selected better qualified to perform the duty which devolved upon them. There were among them men of talent, learning and experience, men of great individuality of character and strong common sense — men of highest courage and profound convictions of duty: in short, a body of men of that diversity of intellectual capacity and practical experience which peculiarly fitted them to deal with the conditions that confronted them, and frame a constitution embodying those great constitutional principles which establish justice, insure domestic tranquillity and secure the blessings of liberty. The constitution drafted distributed the powers of sovereignty between the executive, legislative and judicial departments. In the spheres of their jurisdiction, each department is independent of the other, though combined, they constitute the government. For administering the judiciary department, courts of original and appellate jurisdiction were provided, and also such inferior courts as might be needed. Like many other states, the constitution provided that the judges should be elected by

popular vote, and limited the term of their office to a short period of years. There has always been considerable discussion as to the relative merits of the elective and appointive systems, to secure able and learned jurists, free from prejudice and partisan feeling. Jefferson held that the elective system accords with the doctrine of representative government, and that our national constitution, in making the federal judiciary appointive and their terms for life, was anti-republican. The argument for the elective system is that a republic is founded on the will of the people, who are the source of all power, and that no institution should be allowed to exist independently of their authority; that the offices belong to them, with the consequent right of their bestowal, and that the denial of their ability to select proper judges impeaches their judgment and reflects on their capacity for self-government; that appointive judges, with life terms, would create a privileged class, independent of the will of the people; that the direct responsibility of elective judges to the people is the best guaranty for probity and impartiality, and conduces to a just and pure administration of the law, and that the shortness of their terms will lessen the risk of corruption, or of incompetent judges becoming saddled on the public. On the other hand, it is urged that the appointive system is not a departure from the republican principle that elections should be by the people—that this principle only applies to those offices for which no previous professional training or peculiar qualifications are essential for the discharge of its duties; that the law is an abstruse and difficult science to master, requiring years of study to grasp and apply its principles; that new and intricate questions are continually arising, demanding the soundest judgment and highest professional training to apply the authorities and determine the right of the case; that the bar must necessarily supply the candidates for positions on the bench, and that one man is a better judge of their qualifications and fitness than the whole community, and especially he whom the confidence of the people has elevated to the head of the executive department of government. Between these contending opinions, which fifty years ago entered largely into discussions respecting representative government, the framers of our constitution considered it more in harmony with the principles of a free commonwealth, and better calculated to conduce to a just administration of the law, to make the judicial office elective and its term short. So far as concerns our judiciary, no particular object can now be served by discussion of the relative merits of the two systems for securing able and upright jurists, as our experience with the elective system has so well satisfied our people of its excellence that it is not likely to be abandoned. There are, however, some dangers to which the elective system is liable to be exposed, and some precautions for its security necessary to be observed, whose consideration deserves more than passing notice. We all appreciate the necessity of guarding the judiciary against the evils resulting from ignorance and party prejudice. Lawyers will understand that there is no sure foundation for social order and im-

provement, or security for legal rights and the general progress of mankind, unless the judiciary is learned in the law, of high intelligence and lofty ideals, free from partisan prejudice and rancor, and thoroughly courageous and independent in the performance of their duties. They know that the chief end of government is the dispensation of justice, and that its obstruction from any cause is an evil of such stupendous magnitude, that no country can be prosperous, or its people contented and progressive, where its administration is uncertain and insecure.

All this being true, how important then is the obligation devolving upon lawyers to instruct the people concerning the duties of the judicial function, its relation to the public good and importance to the public welfare, and the absolute necessity of keeping it out of the filth and mire of party politics. The people always desire to do what is right and best, and their mistakes and errors are usually the result of ignorance or bad advice. They are quick to perceive merit or personal worth, and love to reward well doing. They generally have some acquaintance with the lawyers in their communities and their standing in the profession, and only need to have meritorious characters suggested to be willing and glad to advance them to judicial positions. In every community there are members of the legal profession connected with the political parties, who are well qualified by their learning and abilities to fill judicial positions honorably and acceptably. These men are not apt to be what is known as "good political workers," for the reason that their habits of industry and absorption in legal studies occupy their time and tend to disqualify them for political work. It is true that they do not wholly ignore politics, but they do not make politics their business. Like men of studious habits, they generally have clear and well-defined opinions on political topics, understand issues and their bearing upon the public interests, and may be inclined to discuss their views in private or occasionally before public audiences, but they are not, so to speak, "in the political swim," and unless their virtues are discovered by a discerning public, they are apt to be neglected by the political "boss" when judges are to be selected. This is the fitting occasion for lawyers to bring into review before the public mind the qualifications and fitness of their eminent members of the profession for advancement to judicial honors by nominating conventions. The people, already having some knowledge of their character and appreciation of the need of a pure and good administration of the law, will quickly discern their merits and fitness, and respond to their duty in the premises.

It cannot be impressed too strongly on the public mind that a man who has only sufficient legal veneering to pose as a lawyer, and whose only claim for judicial honors is for services rendered as a political striker, is entitled to no consideration whatever. Judicial honors should not be conferred as the reward of political service. Judicial decisions should not be the award of party spoils. The man who seeks judicial preferment at the price of sub-

serviency to party uses, or who is willing to shape his decisions to serve party interests, is a more dangerous and deadly enemy to his country than an armed foe. The portals of the temple of justice must be closed and barred against those ministers of justice who derive their title from the political "boss"; its halls must be saved from the pollution of their presence; its seats of justice must not be profaned by false judgments and perversion of the law. The selection of our judiciary must be vigilantly guarded against the allurements of political bribes, and their independence defended against the assaults of the political "boss." We may concede to the "boss" the whole domain of government, outside of the department of justice, in which to effect his combinations to serve party interests and ends, and to work his scheme of spoils for the bestowal of special favors, but he must keep his hands off our judiciary, for, as Mr. Bourke Cockran said, the people will proclaim to him "our judiciary is our own, our bench is the very sanctuary of our liberties, our lives, our property, our honor; its independence must remain forever sacred; and, drawing around our courts the circle of their indignant protest, they will ordain with a voice as irresistible as that with which the omnipotent God controls the tides of the sea: 'Thus far shalt thou go, and no further.'"

These suggestions are intended to indicate some of the dangers to which our elective judiciary is exposed and the means to be employed to avert them. Fortunately for us, our people have generally exercised wise discretion in the selection of their judges, and secured officials whose character and learning have been pledged for a pure and just administration of the law. A healthy public sentiment has usually prevailed in the selection of our judges. Our politicians, some of whom are lawyers, appreciating the importance of an honest and independent judiciary, have been unwilling to make judicial places dependent upon political favor, and have kept the judicial office out of the mud and mire of politics. The bar has constantly demanded the best talent and character for judicial positions, as absolutely essential to the security of legal rights and the stability of government. The people have come to understand the necessity of selecting able and upright jurists, and have lent their great influence to bring it about. The result is that we have reason to congratulate ourselves on the character, ability and standing of our judiciary, whose labors are manifold and responsible, and whose opinions indicate a sincere desire to arrive at the legal truth and do justice according to law. The labors of the judges are not always appreciated. The preparation of judicial opinions is a difficult and responsible task. Its statements of fact should be compact and easily comprehended, its arrangements orderly and natural, its reasoning logical and cogent, its style perspicuous and dignified, and its authorities appropriate and well selected. There is no better evidence of a judicial thinker than an able and logical opinion cogently and briefly expressed. Long opinions are

generally considered an evil, unless required for clear exposition and treatment of numerous points involved. A long opinion for which there is no justification is a great bore, and apt to be devoid of arrangement, loose in logic and slovenly in style, full of long quotation without much perceptible application, and sometimes with marked indications that its writer but vaguely comprehended his subject. No opinion should shirk the points upon which it was decided by the court below, or seek to get rid of the case by a "squirrel opinion"—that is, by putting it upon grounds never taken by counsel, nor considered by the court below. Of course, the facts will be taken as they appear from the record, and not colored so as to make them conform to the judgment desired to be rendered.

In fact, the more we understand of the nature and duties of the judiciary, the stronger appear the reasons for the selection of men learned in the law, impartial in judgments and independent in character. The law is the reflex of our civilization and of our everyday life. It keeps pace with our scientific knowledge, our industrial progress and our intellectual achievements. Its changes and evolutions are signs of the "ups and downs" of humanity. Its practice, like medicine, often runs to specialties, leading to the highest cultivation in its branches, and the general improvement of the whole body of the law. The variety of subjects to which it is applied, and the vast domain it covers in the affairs of men, under our complex system of state and national jurisprudence, discloses the stupendous intellectual task which it imposes on the lawyer and judge. In every state and community the common law, except as modified by legislation or local circumstances, is in full operation and vigor, adapting itself to the social changes rapidly taking place, the growth in industrial activities, the advance in general enlightenment and the progress of the times; thus giving rise to a variety of new questions, often abstruse and complex and requiring the best brains of the bench and bar to solve on practical lines of justice. This so-called "judge-made law"—the joint product of able lawyers and wise judges—is the grandest monument of human wisdom. It fills the body of our legal system not pervaded with statute law, and in all ages the judicial application and expansion of its principles and maxims has afforded the best guaranty for legal rights and the best security for civil and religious liberty. If our future is to keep pace with the past in the activity of its achievements for humanity and civilization, it is absolutely indispensable that our judiciary should continue to be composed of able and impartial, fearless and incorruptible judges. An ignorant, honest judge, of strong character, spurred on by a mistaken sense of duty, or a vitiated public sentiment, though not so corrupt in mind as a venal or partial judge, may inflict greater wrong on the community by his perversion of the law, because in the latter case the false judgments will be few and exceptional, while in his case the wrongful judgments are liable to be frequent, and affect whole classes of persons and property.

But of all forms of judicial corruption, venality is the worst, the most sordid and degraded. Partiality, though not exhibiting so low and gross a disposition, is, nevertheless, one of the phases of judicial corruption. To our everlasting credit let it be said, no judge of our state has ever been suspected of venality, though there has been some suspicion of partiality, probably due to envy or uncharitableness of spirit. Partiality is that form of corruption which disqualifies the judge for deciding impartially between certain persons and their adversaries. But it seems to me prejudice in the judge is equally as mischievous as partiality, and more to be dreaded. Prejudice insinuates itself unconsciously into the mind, and may be the result of false rumor or gossip, or mistaken public sentiment, or betrayed confidence; but from whatever cause it enters the mind of a judge, it unfits him for judicial duty. A decision which is the outcome of aversion to a litigant, is just as bad as one which is the result of fondness or affection for him. One is based on prejudice and the other on partiality, and both are unjust and corrupt.

Fear is another mental disqualification not less injurious to just judgments than partiality and prejudice. *Animos degeneros timor argent.* Fear is the sign of a coward, and is a quality of mind fatal to independence of judgment. The judge whose judicial action is influenced by fear, adds official delinquency to his miserable cowardice. To be coerced by fear is not a whit better than to be influenced by partiality or prejudice. The post of duty should not be introduced to the craven-hearted. A judge who is intimidated from doing his duty by the outcries of the mob, or the censure of public opinion, or the unjust criticisms of the press, betrays his trust and fouls the fountain of justice. Our courts are the sanctuaries of our liberties; their judges are the guardians of our lives, our fortunes and our honor. They must have the courage of their convictions, and register their decrees unawed by the hand of power, uninfluenced by the voice of popular clamor, and unintimidated by threats of political vengeance. They must stand as immovable as a rock in the sea, amid the rush and roar of contending passions. "The judge who palters with justice," said Chief Justice Ryan, "who is swayed by fear, favor or affection, or by the hope of reward, or by personal influence or public opinion, prostitutes the attributes of God, and sells the favor of his maker as atrociously as Judas did." One more word and I have done. Our judiciary depends for its incumbents on the bar, and, in a general way, reflects its learning and ability, its character and standing. I know our judges fairly well, and in my deliberate judgment, there is no body of men occupying the seats of justice more desirous of doing their duty and serving their state faithfully and impartially. Not one of them could be induced willfully to pervert the law, or declare to be law what he knows is not law. Not one of them could be induced, not for all the kingdoms of the earth, to palter with justice or soil its royal robes. In them we have faithful champions of our laws and liberties, and valiant defenders

of the prestige of our country and its free institutions. Vested with great powers—greater than the highest tribunal exercises in any country of Europe—the power to annul a law when in conflict with the constitution, they exercise it with moderation and wisdom. True to their oath, and true to the liberty-loving spirit of a profession whose members in every age and nation have stood in the front rank of all the great contests for civil and religious liberty, they will stand as a wall of adamant in defense of the constitutional rights of the people against the encroachments of legislative power or executive usurpation.

We should encourage and strengthen our judiciary in the discharge of their arduous and responsible duties. We should lengthen their terms and make their salary commensurate with the dignity and importance of their office. We should do all in our power to make judicial positions attractive and desirable to the ablest and wisest members of the legal profession, so that our courts may continue ever to present "the image of the sanctity of a temple, where truth and justice seem to be enshrined, and to be personified in their decisions."

THE CONSTITUTION AND THE LEGISLATURE.

BY HON. L. B. COX.

In every stage of man's history on earth his conduct has been marked by its accord with certain recognized and established rules or practices, differing, it is true, with racial differences at any given period, changing with every degree of his development, progressing as he progressed, ever striving towards perfection and never reaching it, but in every age bearing such relation to his life as to be denominated "law." The savage has his law, the barbarian his, and civilization has its own.

It is the savage's law that what the strongest may seize by force is his; if he is struck, to strike back; if he suffers loss, to recoup himself by reprisal. His code is unsystematic, discordant and violent; in fact, with him each man is largely a law unto himself.

With the barbarian, law becomes a rule of action. It begins to manifest cohesive properties and to create organized communities; and yet we find that it is a bondservant to the dynasty, promulgated by it and administered in its interest. The weak, who most need its protection, may feel its heavy hand, but never its fostering care. Its office is to build up despotic power and to force the masses to bow down to it, to merge the lives of the subjects into that of their ruler, to silence opposition or protest with the headsman.

We progress a stage further and note the definition given by Blackstone that, "Municipal law is a rule of civil conduct, prescribed by the supreme power in a state, commanding what is right and prohibiting what is wrong." Here is the idea of protection and equality, the safeguard of person and of property. But here is also the patriarchal idea, the exercise of the solicitude of the superior for the welfare of the inferior, and the idea of the administration of the beneficence of law by compulsion.

Hooker gives us this sublime conception: "Of law there can be no less acknowledged, than that her Seat is the Bosom of God, her Voice the Harmony of the World: all things in Heaven and Earth do her homage, the very least as feeling her care, and the greatest as not exempt from her Power: both angels and men, and creatures of what condition soever, though each in different sort and manner, yet all with uniform consent, admiring her as the Mother of their Peace and Joy."

We linger upon these words with delight, and in admiration of his beautiful imagery we may well ask: "Has anything been left unsaid?" It may seem presumptuous to answer in the affirmative, and yet we find here only

the same idea of submission to a mandate, of reverence for a superior thing which we view from afar. This in itself is eminently right and no one could clothe the thought in more charming language, for the law is over all. But the law should also be equally of us, and in us, all. These definitions, even Hooker's, leave out of sight and calculation those rules of action which spring from the inner consciousness of right-minded men. Our conception of law should be, that, as it is indispensible to the welfare of society in which we are all vitally interested factors, it is a part and parcel of our lives and we of its integrity; that it has not its abode in some distant place, but is implanted in the breast of every citizen; that we honor, rather than fear it; that while we yield to its sovereign commands, it is a service of delight and not of compulsion.

We have, then, the double idea of law,—that of a superior power voicing its mandates to the individual, and that of ready acceptance, cordial support and active coöperation on the part of the individual. Perhaps the thought cannot be better expressed than by saying that from the state to the citizen the law operates directly, while, as between citizens, it operates laterally; the state sends down its mandate upon the community, the good citizen distributes it by his influence among his fellow-men. In the first aspect, the constitution and the legislature, at least potentially, stand for all that there is of law; in the second, it is just what the sense of the community makes it.

In every age of the world its population has been divided into two classes —those who possessed power and those who demanded it. The latter class has ever been most numerous, and when contests have come, although often baffled and often defeated, it has pertinaciously and defiantly kept up the struggle, and in the end it has ever proved victorious. It is the undying story of the individual man when roused to consciousness of himself seeking to better his state, and of his unerring instinct that this betterment is dearer to him than to another, and, consequently, that it will be more effectually secured by his own effort than if entrusted to some other. The despised Plebeian thundered at the doors of the Roman senate until the proud Patrician had to concede to him equal rights as a fellow-citizen; and at Runnymede the barons, with the yeomanry at their backs, extorted from the crown the great charter of the liberties of Englishmen.

The present state of the law of our country, which is the subject for consideration, is the result of a process of evolution whose origin and development are easily traced. The Angles and Saxons had never felt the iron heel of Roman despotism, but had been accustomed to community government, in which the crude assemblages of the people, the folkmoot, convened for the consideration of matters affecting the common welfare. When these people invaded Britain, they brought and established their forms of local government, and from them grew the witenagemot, or great assembly of the wise men. With far-seeing wisdom, the conqueror, while extending the Norman idea of sovereignty over the land, left to the people these cherished institu-

tions, and the result was a combination of monarchical and democratic principles, by no means perfect, but in advance of any other form of government then known in Europe. But in this combination there was for centuries marked strife between the crown and the people, who, in course of time, came to look upon parliament as their mouthpiece and champion. Magna Charta placed effectual restraint upon the arbitrary power exercised by the crown, and under the protectorate of Cromwell parliament entrenched itself in a position from which it was never afterwards driven. Indeed, parliament increased so in influence and power that Blackstone wrote of it in 1765, "It hath sovereign and uncontrollable authority."

The British constitution, as it stood then, and now stands, is unwritten. It consists of the whole body of British law, made up of common law, statutes and decisions of courts, and over it parliament stands supreme. In parliament are represented the three estates of the realm—the lords spiritual, the lords temporal and the commons—the first two of which compose the house of lords and the last the house of commons. Parliament may make or unmake laws, and with every enactment an amendment is engrafted upon the constitution. The contrast between the British constitution and our federal and state constitutions is this: Parliament is above the constitution, and when it passes an act the constitution must conform to the act, and not the act to the constitution; the constitution changes, while the act remains steadfast. With us congress is subordinate to the federal constitution, and our legislatures to both that instrument and the constitution of their respective states. When congress passes an act it must conform to the constitution of the United States, and when a state legislature passes an act it must conform both to the constitution of the United States and to that of the state. If it does not, the act falls to the ground and the constitution remains unaffected.

The state governments are older than the national government, and they possessed plenary authority before the national constitution was formed. The latter instrument, as is well known, is an embodiment of the surrender of some specified part of the power possessed by the states, while the states reserved all power not thus surrendered. Judge Cooley, in his work on Constitutional Limitations, states this distinction between the two governments, and lays down the following rules for testing the validity of statutes:—

"The government of the United States is one of *enumerated* powers; the governments of the states are possessed of all the general powers of legislation. When a law of Congress is assailed as void, we look in the national Constitution to see if the grant of specified powers is broad enough to embrace it; but when a State law is attacked on the same ground, it is presumably valid in any case, and this presumption is a conclusive one, unless in the Constitution of the United States or of the State we are able to discover that it is prohibited. We look in the Constitution of the United States for *grants* of legislative power, but in the constitution of the State to ascertain

if any *limitations* have been imposed upon the complete power with which the legislative department of the State was vested in its creation. Congress can pass no laws but such as the Constitution authorizes, either expressly or by clear implication; while the State legislature has jurisdiction of all subjects on which its legislation is not prohibited."

The people of the several states are sovereign, except as limitations are laid upon their authority by the constitution of the United States. In their original and sovereign capacity they create and adopt their constitutions as supplying the framework upon which the state governments are to be constructed. Every constitution embodies a free will surrender by the people of some part of their original power for the common good. It is a guaranty of stability and safety. In creating the departments of government the people agree that they will not exercise the functions committed to them otherwise than through their agency. Thus, the people cannot adopt laws by a popular vote, or in any other manner than through the legislative branch. A constitution, by its mandates to and inhibitions upon the departments of government, is designed to operate, and does operate, as a safeguard against the delinquencies and excesses of its agencies, but in a wider sense it is intended to protect the people against themselves. It is a compact made by the people with themselves, that while the constitution stands they will never sweep away in haste or passion what they have ordained in the hour of calm deliberation.

The scheme of government for the American colonies consisted of the royal charters, and under them governors, local legislative bodies, and courts of justice. When the colonies abjured their allegiance to Great Britain in 1776, they were accustomed to the organization and administration of the government and laws of the mother country at large and as applied to their immediate conditions, and the impress of the system is manifest in the plan of government adopted by the nascent states. While the framework of our state and national systems is unique in comparison with other forms of government, it is in a large degree imitative and not the creation of any divine spark of original genius. Guided by bitter experience in the past and with their future lying in the field of experiment, the people were unwilling to entrust the great fundamental principles of their governments to the hazards of unknown and perhaps uncontrollable vicissitudes, and so they embodied them in formal, written constitutions, changeable only at the dictation of the power which created them, that is to say, the voice of the people. But these constitutions had their exemplars in the royal charters. Indeed, the people of Connecticut in 1776 formally continued the charter of 1662 in force as their constitution, and it stood until 1818, while the charter of Rhode Island of 1663 stood by common consent as the constitution of the state until 1842.

The constitution of Oregon was framed by a convention of sixty delegates, chosen under an act of the territorial assembly, passed December 12, 1856,

whose sessions were held in a frame building which is still standing in this city and is now used as a livery barn—"sad relic of departed worth!" The convention assembled on August 17, and adjourned on September 18, 1857. The constitution was submitted to a vote of the people of the state at an election held on November 9, 1857, and was carried by a vote of seven thousand one hundred and ninety-five in the affirmative, against three thousand one hundred and ninety-five in the negative. This action was all in advance of any on the part of congress, but an enabling act was approved forty years ago this day, and Oregon was admitted to the sisterhood of states. I refrain from giving any review of the personnel of the constitutional convention, as by the programme of the day that task naturally falls to the part of one far more able to do it justice, but I will say of their labors that every line of the instrument bears witness of the single-hearted sincerity of the delegates in their discharge of a high public duty, and their work will stand as an imperishable monument to their wisdom. It is to be admitted that in many respects the constitution is not adequate for the present needs of the state; but which one of these men who had driven an ox team across two thousand miles of hostile and, in great measure, barren country dreamed that he would live to see his trail covered by the locomotive and the telegraph? Our constitution has, in the main, served its purpose well, and we should not let it go until we have a safe assurance that we will get a better one in its stead.

It is provided in the constitution that amendments may be proposed in the legislative assembly, and, if approved, they shall be submitted to the next succeeding assembly. If its action accords with that of the first, then the amendments are to be submitted to a popular vote. It will thus in regular order take more than two years to impose an amendment upon the constitution, which is in itself a guaranty against inconsiderate action, and none have ever been made. But it seems only reasonable to conclude that the framers of the constitution had other precautions in mind, which perhaps are not ordinarily taken into account by either the legislature or the people.

The legislature is the law-making body representing the people; through it alone can deliberative counsel be given to such measures; and its consideration of proposed amendments is designed to take the place of that of a convention. As the act is a more solemn and important one than the passage of statutes, it should receive even deeper and more earnest attention, and no legislator should vote for the submission of an amendment unless its merit appeals to his own judgment. On the other hand, as legislators are required to vote openly and be recorded upon such measures and then go to their constituencies for a new election, it seems manifest that it must have been the expectation of the framers of the constitution that these proposed amendments would be the subject of popular interest, and that the sentiment of the people would be given expression in the intervening election.

In this way the calm, deliberate and steadfast popular sense would be obtained, both through the accredited representatives of the people and by their own direct voice. Legislatures are assembled to exercise their judgment in a substantive way, and this is one of the high duties laid upon them by the constitution. The disposition which is sometimes met with to submit a question to a popular vote simply because some people or set of people desire to test public sentiment on the proposition involved can hardly be reconciled with the duty a legislator owes the state. And so, if legislatures submit amendments in a perfunctory manner, and the people refrain from giving serious consideration to them until the election at which they come up for adoption, excitement may not be aroused until the last moment, hasty or passionate action may result, and the whole spirit of the constitutional safeguards may be destroyed.

As paradoxical as it may seem, it would require at least less time, if not less formality, to wipe out our entire constitution and substitute another for it, than it would to change its most unimportant provision. The constitution provides no means for its own extinguishment, but the first article of the bill of rights is a warrant for the exercise of popular action, wherein it is declared that, "all power is inherent in the people, and all free governments are founded on their authority and instituted for their peace, safety and happiness; and they have at all times a right to alter, reform or abolish the government in such manner as they may think proper." It is almost universally conceded that it is one of the inherent powers of a legislative assembly to summon the representatives of the people to a constitutional convention, and to provide a scheme for its organization, the conduct of its deliberations and the submission of its work for popular approval.

It would be possible in this state to abolish our present constitution and to submit an entirely different one for it in two months' time. This stands as a perpetual menace to the stability of our institutions, but the danger is more nominal than real, for the good sense of the people of our country has usually been equal to any emergency which has confronted them, and, I believe, the California constitution of 1875 is the only one which has been framed and adopted in any of the states in times of peace under the influence of violent excitement.

In the schemes of government which were devised by the original thirteen states, we recognize the influence of the British system. We had no lords temporal, and experience or wisdom dictated the policy of a divorcement of the affairs of church and state; but two distinctive features of the old regime were retained. Two houses were established in the legislative assemblies by all the states, except Pennsylvania and Georgia, to act as a safeguard against hasty and ill-considered legislation; and the legislative branch of government was given great latitude of action, a fact probably due to the unrestricted power of parliament to which the people of the colonies had been so long accustomed. While theoretically the three branches

of our state governments are coördinate, actually the legislative branch is the most powerful, and this was so in the early days of the republic in a far more marked degree than now prevails. Madison said in the Philadelphia convention of 1787: "Experience proves a tendency in our governments to throw all power into the legislative vortex. The executives of the states are little more than ciphers; the legislatures are omnipotent." But since that time the growing tendency has been to limit legislative power. For instance, in the first constitution of Virginia, with the exception of certain fundamental principles laid down in the bill of rights and which acted as limitations on legislative authority, the only restriction imposed upon the legislature was that all measures should originate in the lower house and that the senate could not amend "money bills." But with each of the four succeeding constitutions of that state the legislature has been more and more circumscribed in its power; and this has been the history of all the states.

The modern idea of constitution-making is, instead of designing a skeleton frame of government embodying only fundamental principles, to fill the instrument with provisions intended to supplant, or to mold and direct, legislation. This is in a measure justified by the increasing and expanding interests of the public, but in large degree it has been due to popular distrust of our legislatures. This tendency has had its reflex consequences. Legislatures have not felt that they possessed the same measure of confidence that was originally accorded them, and, falling in with the spirit of the times, their work has deteriorated in quality. From one cause or another it has come to pass, unfortunately often with too much reason, that many persons look upon the assembling of a state legislature as an occasion of grave apprehension of public injury. Indeed, such a close and profound student of our institutions as Mr. Brice has gone so far as to declare, speaking of legislatures, that, "the time might almost seem to have come for prescribing that, like congress, they should be entitled to legislate on certain enumerated subjects only, and be always required to establish affirmatively their competence to deal with any given topic."

But with regard to the power of the legislature as it now exists, it may be said that it is supreme and uncontrollable, so long as it does not infringe upon the provisions of our national and state constitutions. It is not my purpose to enter at length upon the established and salutary right to pass on the constitutionality of legislative enactments which is exercised by the courts, and yet the language of Judge Paterson in the first reported case in which this power was claimed and exercised (*Vanhorne's Lessee* v. *Dorrance*, 2 Dall., 304) is so instructive in this connection that it ought not to be omitted. He says:—

"What is a constitution? It is the form of government, delineated by the mighty hand of the people, in which certain first principles of fundamental laws are established. The constitution is certain and fixed; it contains the permanent will of the people, and is the supreme law of the land;

it is paramount to the power of the legislature, and can be revoked or altered only by the authority that made it. The life-giving principle and the death-doing stroke must proceed from the same hand. What are legislatures? Creatures of the constitution; they owe their existence to the constitution: they derive their powers from the constitution: it is their commission; and therefore, all their acts must be conformable to it, or else they will be void. The constitution is the work or will of the people themselves, in their original, sovereign and unlimited capacity. Law is the work or will of the legislature, in their derivative and subordinate capacity. The one is the work of the creator, and the other of the creature. The constitution fixes limits to the exercise of legislative authority, and prescribes the orbit within which it must move. In short, gentlemen, the constitution is the sun of the political system, around which all legislative, executive and judicial bodies must revolve. Whatever may be the case in other countries, yet, in this, there can be no doubt, that every act of the legislature, repugnant to the constitution, is absolutely void."

Because of the right exercised by the courts to declare enactments void for noncomformity with the constitution, it is to be feared there has arisen with legislators a lax sense of their own responsibility in this behalf. It is true that the courts, composed of trained lawyers and having resources to aid them not at the command of legislatures, whose members are drawn from various walks of life, are better qualified to pass judgment on the constitutionality of a statute; but this does not absolve legislators from their duty. The maxim that every law must be brought to the test of the constitution is as binding on legislators as on judges. Each takes the same oath to support the constitution of the United States and of his state, and the legislator has no right to absolve his conscience from this oath, to relieve himself of equal responsibility, and to throw upon the courts the determination of a question which it is his duty to determine for himself. The legislator is recreant to his trust who treats with indifference the question of the constitutionality of any measure upon which he is called to act; and if he gives his vote in favor of a measure which he knows or believes to be unconstitutional, he is false to his oath of office. He is bound by every consideration of his obligation to the public and to himself to exercise the best judgment he can bring to bear upon the question before him, and if he then entertains an honest doubt as to its constitutionality, it is his duty to keep on the safe side and cast a negative vote.

Indeed, the responsibility of determining questions of this character is more binding on the legislator than it is upon the judge. There are constitutional mandates requiring action by the legislature. If they are not complied with the constitution is violated, but the courts cannot reach the case at all. There are provisions of other kinds in regard to which the courts will rarely undertake to review legislative action or discretion. Thus, the legislature may empower the taking of private property for public use, and

if in any given act it defines a certain use to be public, whatever judges might think of the question as an original proposition, they will refrain from reviewing this legislative determination, except in cases of clear and flagrant abuse. It may, in fact, be laid down as a rule of universal application that deference is always given by the courts to the judgment of the legislature upon the constitutionality of questions as manifested in its enactments, and it is a canon of construction that when the legislature has determined an act to be constitutional the courts will follow its decision, unless the incompatibility between the act and the constitution is clear. There are repeated instances in this state of legislative encroachments upon the constitution which the courts have refused to disturb on just this ground, and with a greater degree of hesitation than I think has always been commendable.

No legislative assembly has the power to perpetuate its own laws or to restrict the action of a succeeding assembly in regard thereto, except that when a law is passed which holds out an inducement to other parties to act upon it, and they do take such action that a repeal of the law would operate prejudicially to their interests, the first enactment may be construed to amount to a contract between the state and these parties. In that event, the passage of a repealing act would be obnoxious to section 10 of article I of the federal constitution, which inhibits the states from passing any law impairing the obligation of contracts. Thus, in the beet sugar bounty bill before the present session of our legislature, if an invitation had thereby been held out for the establishment of sugar refineries, and the invitation had been accepted and a refinery established upon the faith of the promised bounty, the act would be construed to have created a contract between the state and the proprietors of the refinery, and could not be repealed. Except in some such case as this, there are no restrictions which one legislature may impose upon another. Each assembly has coördinate authority with every other, and each has inherent power to change the laws in force when it comes into existence.

An observant student of political science has condemned the idea that we should strive to get only our best men into public positions, and has asserted that our aim should rather be to get our average men. It is the average man who stands for the community of which he is a member, and, consequently, when the average man is chosen there is chosen the representative man, and his judgment and action are apt to be more consonant with the needs of his constituency than will be those of one whose ideas soar too high or fall too low. I am not sure but that there is profound wisdom in this philosophy. Applying it to the case of a legislative assembly, it would seem that the ideal body is one which represents the average tone of the state, and if it is not at least up to this standard it is because the people of the state do not care to have it so. At all events, making due allowance for imperfections of men which are not apparent until the test has been applied, it may be said that our legislators are just as good as the communities which

elect them. Bad men are found in every community, and bad men may be expected in every large body representing the community, but I know that in every legislature there are many earnest, conscientious and unselfish men who are inspired by the noble impulse of rendering good service to the state to the utmost limit of their ability and understanding, and I am not at all in sympathy with the spirit of universal and undiscriminating condemnation which makes a reproach of the office, chills rather than stimulates honest effort, and drives good men away from the public service instead of attracting them to it. If unfaithful servants get into our legislatures they should be singled out and pilloried before the public, and the odium of evil legislation for which they are responsible should be fastened directly upon them, and not charged in the same measure upon those who may have put forth their best efforts in opposing what was done.

Every body of men is apt to be carried away at times by political excitement or by partisan support of measures designed to serve political ends, and in matters of every kind men collectively are apt to do things which they would not do as individuals. From these causes results much of the discredit which attends the sessions of our legislative assemblies, and when the excitement or impulse of the hour has passed the participants themselves often sincerely regret their action. But if I may be allowed to point out the peculiar direction in which the efforts of legislators fall short of the expectations, or perhaps rather "hopes," of their constituencies, and I speak in a measure from personal experience, I will say I think the chief trouble arises from the plethora of bills which deluge every assembly. This signifies a good impulse, but it is unfortunate in its results.

It is the office of legislatures to improve upon the laws, and each legislator, when he repairs to his post, feels that he comes clothed with a high commission to accomplish this end. Each brings a budget of measures which in his judgment are calculated to cover weak spots in the existing laws. In the main these measures embody some good, or, at least, the intention behind them is good; but there is wisdom in counsel, and oftentimes the member introducing a bill will confess its inutility when subjected to the test of a general discussion. Many other measures which do not appeal to the judgment of the legislator are introduced at the request of outside parties. They all go in; they all command consideration; and the result is that, in a short session like that of this state, it is a matter of sheer physical impossibility for any living man to know what is contained in all the bills upon which he is required to act. Towards the end of the session, when the congestion becomes acute and measures are forced through without debate, the unscrupulous schemer finds his opportunity and avails himself of it to the fullest extent. This is the chief secret of vicious and, likewise, of hasty and ill-considered legislation, and to this more than to anything else are due the results which have brought our legislatures into disrepute.

No better illustration of what is here said could be suggested than that afforded by the conditions immediately confronting us. The sitting legislature will have not more than thirty working days for the consideration of measures before it. There have now been introduced in the senate two hundred and thirty-five bills and in the house three hundred and eighty bills. There remain of the session four working days, and in that time there will be nearly three hundred bills demanding consideration. It seems as if some scheme ought to be devised to lessen this disparity between the amount of work to be performed and the opportunities given for its proper performance.

One of the greatest temptations which confront our legislatures and one of the chief sources of dissatisfaction which arise over their work lie in what may be denominated sympathetic and expediency legislation. The first usually finds expression in relief bills, ordinarily directed at the public treasury, and the second may be embodied in any form of bill which the ingenuity of man can frame. Both classes of measures are inimical to the good order of society. Thoughtful persons will all agree that if the law should be administered by our courts upon the hardships of each case brought before them, order would give place to chaos, and the determination of controversies would ultimately degenerate into the ascertainment of the question as to which of two litigants was most necessitous, regardless of the merits of his claim. It is a canon of jurisprudence that every person who comes into court must bring his case within some fixed principle of universal application, or it will not be entertained. It is just as true of the enactment of laws as it is of their administration, and no law of this character should be passed unless it can be brought within some general principle which appeals to the favorable consideration of the legislature. For illustration, some community asks an appropriation to build a bridge or a highway, on the score that the community is desirous of securing such object, but is unable to afford it. The petition ought to be denied, unless it is to be the general policy of the state to build such bridges or highways in all communities. And so with very many measures for personal relief. Cases may, of course, arise in which the interests of the whole state will be promoted by some act of a special character, and they will properly form exceptions to the rule, but that such is their nature should be the subject of very careful inquiry.

The pressure brought to bear upon legislators for the attainment of local advantages has had a marked evil tendency, for which the people themselves are largely responsible. Men lose sight of the fact that the legislature is a state body, whose actions should be as broad as the confines of the state, but regard it as an assemblage of local representatives, the primary duty of each of whom is to look out for the interests of the county he happens to represent, and in large degree the ability of a candidate to "get the most" for his immediate constituency is made a test of his fitness for

the office. The importunities thus forced upon a representative impress upon him the idea that he is the peculiar champion of his district, rather than a state officer, and incline him to adopt a course which will be grateful to those whose votes have elected him and upon whom he will have to depend for reëlection. Taking this view of the demands of his locality and casting about for means whereby to attain his ends, he easily becomes involved in the practice popularly denominated "log-rolling," which, when it embodies only a mutual aid compact without regard to the merits of the questions involved, is in every sense of the word without principle and pernicious. If legislators would appreciate and always remember that their first duty is to the state, and that if a clash arises between this duty and that which they owe to their immediate constituencies, the latter should yield, there would result a higher order of legislation and our assemblies would be purged of much which now brings to them only shame and disgrace.

Of expediency legislation it may be said that the prime essential of laws is fixedness and stability. Changing and short-lived conditions may arise for which concurrent application of law must be made, but where conditions do not fluctuate it serves no good end to apply to them fluctuating laws. The passage of laws to meet some popular whim, or to compass some temporary end, is almost invariably attended with mischief.

Among the troubles from which the people of our country at large suffer, although it is a source of no inconsiderable sustenance to us lawyers, there stands out prominently the lack of uniformity between the laws of the different states. All such matters as wills, inheritances, domestic relations, the transfer of real property, the organization and control of corporations, and innumerable others, depend upon the laws of the various states, and a lawyer with a business extending into many states has to make of himself an encylcopædia of inconsistent laws, difficult often for him to harmonize, and beyond the ken of the layman to understand. There is no sense in this condition of affairs and it ought not to be allowed to continue.

Courts and lawyers stand appalled at the colossal monument of law books which is constantly being reared, and ask in dismay what the end is to be. Much of the work now entailed upon both bench and bar is devoted to the attempt to reconcile by argument conflicting provisions of law, or to establish an identity of signification where there is lacking an identity of language. This work would be greatly simplified, and the burdensome array of printed books would be much curtailed, if our legislatures would get together on common ground of statutory enactments. The uniformity act in regard to negotiable instruments passed at the present session of this legislature is a long step in the right direction, and it is to be greatly hoped that future assemblies will follow this good precedent.

In line with these observations, and of no less practical importance to the people of our state, is the lack of uniformity and harmony in the different

provisions of our own laws, due to fragmentary legislation. We have hardly a comprehensive exposition of any subject of statutory treatment that is not patched over with amendments. These have not been made by any single student of the system, but in a wholly haphazard way, some at one time and some at another, one person applying a touch here and another there, until all semblance of original symmetry may be destroyed. And when a well devised law has been introduced into the legislature it is quite as likely as otherwise that it will be amended by some member or some committee not having the idea of the original draftsman, and thus an incongruity will be fastened upon it. Legislators and legislative committees in acting upon statutes which profess directly, or have the effect by implication, to change existing laws should carefully consider what bearing the proposed law will have upon the whole body of enactments touching the subject matter.

In what has been said reflecting unfavorably upon the action of legislators I have not designed any personal application, and I trust that my remarks may be accepted in an entirely general sense,—as addressed to legislatures at large, and not to Oregon legislatures alone. I have not assumed to read a homily to the present session, or to sit in judgment upon the actions of its members collectively or individually; but I have simply not allowed the coincidence of time between the day of this celebration and the sitting of the assembly now in office to alter the tone of my address from what it would have been if delivered upon some other occasion. I will only say in conclusion to the legislators here present, all of whom I trust I may call my friends, that the office of law-maker is now, as it has ever been, one of the highest functions in which the citizen can serve his state, and it is one whose duties should be most sacredly guarded. The vigilant, intelligent and honest legislator is a pillar of the governmental temple; while one who is slothful, inefficient and dishonest is a miner and sapper of its foundations. Peculiarly in the hands of our legislatures is the destiny of the people of our country, and by their action will this destiny be shaped. Whatever may betide us of weal or woe, let it never be forgotten that the ægis and panoply of the liberties of this land are to be found in our constitutions and the laws passed in pursuance thereof.

HISTORICAL REVIEW

BY JUDGE GEORGE H. WILLIAMS

On the fourteenth day of February, 1859, Oregon was admitted as a state into the federal union. To aid in the commemoration of that event I have been requested at this time and place to read a paper concerning the political affairs of Oregon from 1853, inclusive, to 1865, "all of which I saw and a part of which I was." Time has effaced from my memory many of the interesting incidents of those early days, and all I can hope to do is to state some facts of our early political history not easily accessible, and make a brief record of the names and some of the doings of the men most prominent in that history, which may revive the recollections of the old and be useful to those who have come upon the active stage of life since the above named period.

Franklin Pierce was inaugurated president of the United States March 4, 1853, and his cabinet was made up as follows: William L. Marcy, of New York, secretary of state; James Guthrie, of Kentucky, secretary of the treasury; Jefferson Davis, of Mississippi, secretary of war; James C. Dobbins, of North Carolina, secretary of the navy; Robert McMillen, of Michigan, secretary of the interior; James Campbell, of Pennsylvania, postmaster-general; Caleb Cushing, of Massachusetts, attorney-general. I believe this cabinet combined as much ability as any cabinet that has existed in our country since the formation of the government.

Very soon after President Pierce was inaugurated he nominated Hon. O. C. Pratt for chief justice of Oregon, but on account of the opposition of Senator Stephen A. Douglas, his nomination was rejected by the senate. Prior to this, Judge Pratt had been an associate justice of the supreme court of Oregon, and had become involved in a bitter controversy with Chief Justice Nelson and Judge William Strong on the question as to whether Oregon City or Salem was the seat of government for the territory. This, however, had nothing to do with his rejection by the senate. That was due, as it was understood, to some personal difficulty between the senator and Judge Pratt. President Pierce early in his administration appointed Gen. Joseph Lane governor and George L. Curry secretary of the territory, and they entered upon their official duties as such in May, 1853. Immediately after the senate refused to confirm the nomination of Judge Pratt, without my knowledge or consent, I was nominated for chief justice of Oregon upon the recommendation of Senator Douglas, of Illinois, and Senators Dodge

and Jones, of Iowa, all of whom were my personal and political friends. I was then a resident of Iowa, and had canvassed the state as a presidental elector-at-large for Franklin Pierce. I arrived in Oregon with my commission as chief justice in June, 1853. Judges Matthew P. Deady and Cyrus Olney, both of whom were residents of Oregon, were my associates, appointed before my arrival. The officials of the territorial government of Oregon in 1853 were as follows:—

Joseph Lane, governor; George L. Curry, secretary; George H. Williams, chief justice; Matthew P. Deady, associate justice; Cyrus Olney, associate justice; Joel Palmer, superintendent of Indian affairs; Benjamin F. Harding, United States attorney; James W. Nesmith, United States marshal; John Adair, collector of customs at Astoria; Addison C. Gibbs, collector of customs at Umpqua; A. L. Lovejoy, postal agent.

General Lane, within a few days after he assumed the duties of governor, resigned to become the democratic candidate for delegate in congress. George L. Curry then became the acting governor. General Lane was nominated on the eleventh day of April, 1853. The resolutions of the convention affirmed the platform adopted by the democratic national convention, held at Baltimore in June, 1852, favored a branch of the Pacific railroad from San Francisco to Puget sound, favored the annexation of the Sandwich islands, and approved the course of General Lane in congress, he having been the delegate from Oregon after the death of Mr. Thurston, which occurred in April, 1851. A. A. Skinner, who had been a judge under the provisional government, was requested in a letter addressed to him by a large number of the citizens of Jackson county to become a candidate for delegate in opposition to General Lane. He accepted the invitation by letter, in which he assumed to be the candidate of the people and claimed that the democratic party or the "Durham faction," as he called that party, misgoverned the territory, misrepresented the people in congress, and otherwise was a very bad party. General Lane, in his canvass, appealed to the democrats for support upon party grounds, and was not too modest in telling the people what he had done and what he could do for his constituents, if elected. Judge Skinner appealed to the people to ignore party considerations in his behalf, and amplified, as well as he could, the bad qualities of the "Durham faction," as indicated in his letter of acceptance. This designation of the democratic party as the Durham faction originated, as it is understood, in this way: Judge O. C. Pratt, who was a prominent member of the democratic party, purchased from John Durham, of Polk county, a band of Spanish cattle. Subsequently he sold this band, which he called "the Durham cattle," to a purchaser who supposed he was buying blooded stock, and paid the judge a correspondingly high price, and, of course, "was out and injured" in the trade. Thomas J. Dryer, then editor of The Oregonian and an ardent whig, availing himself of this circumstance, characterized the democrats of Oregon as "the Durham faction," and with tireless

iteration hurled this epithet at them through the columns of his paper, and the appellation was generally accepted by the enemies of the democratic party. General Lane was elected, receiving four thousand five hundred and sixteen votes, to two thousand nine hundred and fifty-one for Judge Skinner. Some of the people voted according to their personal predilections, but the democrats generally supported General Lane and the whigs Judge Skinner.

The legislature of 1853 met at Salem, December 5. The council consisted of the following members: J. M. Fulkerson, of Polk and Tillamook; L. P. Powers, of Clatsop; John Richardson, of Yamhill; Ralph Wilcox, of Washington; L. Scott, of Umpqua; James K. Kelly, of Clackamas; B. Simpson, of Marion. Ralph Wilcox was elected president, and Samuel B. Garrett chief clerk. House—L. F. Cartee, J. C. Carson, B. B. Jackson, of Clackamas; L. F. Grover, J. C. Peebles, E. F. Colby, of Marion; Luther Elkins, I. N. Smith, of Linn; Stephen Goff, H. G. Hadley, of Lane; L. S. Thompson, of Umpqua; John F. Miller, Chauncey Nye, G. H. Ambrose, of Jackson; J. F. Burnett, B. F. Chapman, of Benton; W. S. Gilliam, R. P. Boise, of Polk; Andrew Shuck, A. B. Westerfall, of Yamhill; O. Humason, of Wasco; A. A. Durham, Z. C. Bishop, Robert Thompson, of Washington; J. W. Moffit, of Clatsop. Z. C. Bishop was elected speaker, and John McCracken clerk.

John W. Davis, of Indiana, was appointed governor to succeed General Lane, and arrived in Oregon in December, 1853. He had been a representative in congress from Indiana and speaker of the house of representatives. He did not find his surroundings in Oregon congenial, and in August, 1854, resigned and returned to Indiana. George L. Curry again became acting governor, and in November, 1854, succeeded Mr. Davis as governor, and at the same time Benjamin F. Harding was appointed secretary and William H. Farrar district attorney.

According to the act establishing a territorial government for Oregon, which passed congress August 14, 1848, the territory was divided into three judicial districts, in each of which the district courts were to be held by one of the justices of the supreme court.

After my arrival, by mutual agreement between us, Judge Deady took the first district, consisting of the counties of Jackson, Douglas and Umpqua; Judge Olney took the third district, consisting of Clatsop, Washington (of which Multnomah was then a part), Clackamas and Columbia, and I took the second district, consisting of Marion, Linn, Lane, Benton, Polk and Yamhill counties. These three judges together constituted the supreme court of the territory. Prior to my appointment a colored man, who with his wife and children were held as slaves by Nathaniel Ford, of Polk county, sued out a writ of *habeas corpus*, claiming that he and his family were entitled to their freedom in Oregon. Whether or not slaveholders could carry their slaves into the territories and hold them there as property had become a burning question, and my predecessors in office, for reasons best known to themselves, had declined to hear the case. This was among the first cases I

was called upon to decide. Mr. Ford contended that these colored people were his property in Missouri, from which he emigrated, and he had as much right to bring that kind of property into Oregon and hold it here as such as he had to bring his cattle or any other property here and hold it as such; but my opinion was, and I so held, that without some positive legislative enactment establishing slavery here, it did not and could not exist in Oregon, and I awarded to the colored people their freedom. Judge Boise was the attorney for the petitioners. So far as I know, this was the last effort made to hold slaves in Oregon by force of law. There were a great many virulent proslavery men in the territory, and this decision, of course, was very distasteful to them.

According to the organic act, the legislative assembly was divided into two bodies, one, corresponding to the state senate, was called the council, and the other, corresponding to the house of representatives, was called the house. The power of the legislative assembly extended to all rightful subjects of legislation not inconsistent with the constitution and laws of the United States, so that as to local matters the power of the territorial was more unlimited than that of the state legislature. June 3, 1854, an election was held for members of the legislative assembly, which met at Salem December 4, and consisted of the following persons: Council—Dr. Cleveland, of Jackson; James K. Kelly, of Clackamas; J. C. Peebles, of Marion; S. W. Phelps, of Linn; Dr. Greer, of Washington and Columbia; J. M. Fulkerson, of Polk and Tillamook; John Richardson, of Yhamill; Levi Scott, of Umpqua. James K. Kelly was elected president, and B. Genois chief clerk. House—G. W. Coffenbury, E. S. Turner and David Logan, Washington; A. G. Henry and A. J. Hembree, Yamhill; H. N. V. Holmes, Polk and Tillamook; I. F. M. Butler, Polk; Wayman St. Clair and B. B. Hinton, Benton; L. F. Cartee, W. A. Starkweather and A. L. Lovejoy, Clackamas; C. P. Crandall, R. C. Geer and N. Ford, Marion; Luther Elkins, Delazon Smith and Hugh Brown, Linn; A. W. Patterson and Jacob Gillespie, Lane; James F. Gazley, Douglas; Patrick Dunn and Alex. McIntire, Jackson; O. Humason, Wasco.

In 1854 the "know-nothing," or, as it called itself, the American party, became a prominent factor in the politics of Oregon. It was a secret, oath-bound political organization. "Know-nothing" was a name applied to it because, as it was alleged, its members, when questioned as to such an organization, declared that they knew nothing about it. Democrats and whigs, and more especially the democrats, were alarmed at the inroads of this new and invisible enemy to the old political parties. So far as the principles of this party were known to the public, they proposed a repeal or modification of the naturalization laws; repeal of all laws allowing unnaturalized foreigners to vote, or to receive grants of public lands; resistance to what they called the aggressive policy and corrupting tendencies of the Roman Catholic church, and excluding from office all persons who directly or indirectly

owed allegience to any foreign power. Some time in the fall of 1854 the Oregon Statesman, then edited by Asahel Bush, published an exposure of the oaths, obligations and proceedings of the know-nothing lodge in Salem, together with the names of the leading members. This publication produced no little excitement. Several gentlemen who had been named as members of the lodge called upon Mr. Bush and declared they would hold him personally responsible if he did not give them the name of his informant. This threat Mr. Bush ignored, and refused to give the makers of it any satisfaction, and it was expected for some days that he would be assaulted, but the expected did not happen. This exposure in the Statesman was a fatal blow to the know-nothing party in Oregon. Determined, however, to make the know-nothings show their hands, the legislature, at its December session, 1854, passed an act requiring all voters at the polls to vote *viva voce*, that is, to proclaim publicly the name of the candidate for whom they voted. This act, after it had accomplished its purpose, was repealed.

Much of the time of this session was devoted to a controversy about the location of the capitol. Finally a bill was passed locating the capitol at Corvallis and the state university at Jacksonville. A bill was also passed creating Multnomah county, and another submitting to the people the question as to the formation of a state government. Congress had made appropriations for a state house and other public buildings at Salem, and some of these buildings were partly constructed when the seat of government was changed to Corvallis, and thereupon the controller of the treasury refused to recognize the act changing the capitol, and held that moneys appropriated by congress for public buildings in Oregon could be expended only at Salem.

In the legislature of 1854 a proposition was made to exclude free negroes and Chinese from the territory, and a motion was made by a member from Jackson county to amend the bill so that slaveholders might bring and hold their slaves in Oregon, but the bill did not pass. Incidental to the canvass in June, 1854, it may be mentioned that the whigs carried Washington, then including what is now Multnomah county, by an average majority of sixty. David Logan, whig, was elected to the legislature by a vote of six hundred and forty-eight to five hundred and ninety-two for D. H. Belknap, democrat. There were cast in the city of Portland at that election three hundred and five votes for Logan and two hundred and twenty-six for Belknap. Mr. Josiah Failing was mayor of Portland. The proposition to hold a convention to form a constitution was defeated by a vote of three thousand two hundred and ten for, to four thousand and seventy-nine against it. P. P. Prim was elected prosecuting attorney in the first district, R. P. Boise in the second, and Noah Huber in the third district.

Some time in the fall of 1853 O. B. McFadden was appointed an associate justice in Oregon upon the ground, as it was alleged, that in the commission of Judge Deady he was named Mordecai P. Deady instead of Matthew P. Deady. This, however, was soon rectified by a new commission in which he

was correctly named, and Judge McFadden was transferred as a judge to the territory of Washington. James A. Burnett was territorial auditor, Nat. H. Lane treasurer, and Milton Shannon librarian. John B. Preston was removed in 1853 from the office of surveyor-general, and Colonel Gardner appointed in his place. It was in this year that the Indian outbreak occurred in Southern Oregon.

In June, 1855, an election was held for delegate to congress and members of the legislative assembly. Gen. Joseph Lane was the candidate of the democrats, Gov. John P. Gaines of the whig party. General Lane had the advantage of General Gaines in several respects. The democratic party was in the ascendant in the territory, and General Lane was a thorough-going party man. He was a born politician. He knew how to flatter and please the people. General Gaines had been governor of Oregon under the Fillmore administration, and had more dignity than affability in his manners. Both candidates were officers in the Mexican war, and General Gaines had been in congress from the state of Kentucky. The whig convention adopted as a platform "General Gaines against the world." The democratic platform was made up of the usual platitudes of a party platform. The canvass was somewhat exciting and the candidates indulged in some unpleasant personalities, but the Oregon Statesman, the organ of the democrats, and The Oregonian, the organ of the whigs, exhausted the vocabulary of invective and abuse in speaking of their opponents. The chief speakers for the democrats in this campaign were General Lane, Delazon Smith and Judge O. C. Pratt. Those for the whigs were General Gaines and T. J. Dryer. General Lane was elected, receiving six thousand one hundred and thirty-five votes to three thousand nine hundred and eighty-six for General Gaines. Jackson county cast the largest vote of any county in the territory, giving to Lane eight hundred and nineteen and Gaines six hundred and seventy-seven. Marion was next, with a vote of seven hundred and forty-two for Lane and four hundred and seventy-one for Gaines, and Linn next, with a vote of seven hundred and eighty-three for Lane and three hundred and ninety-nine for Gaines. Multnomah at that election gave Lane three hundred and forty, and Gaines two hundred and sixty-seven votes. The proposition for a state government was defeated by a vote of four thousand four hundred and twenty-two for to four thousand eight hundred and thirty-five against it. On the tenth of February, 1855, John McCraken was appointed marshal of the territory. December 3, the legislature assembled at Corvallis, and consisted of the following members: Council—Polk, James M. Fulkerson; Linn, Charles Drain; Douglas and Coos, Hugh D. O'Bryant; Marion, J. C. Peebles; Benton, Avery A. Smith; Clackamas, James K. Kelly; Multnomah, Washington and Columbia, A. P. Dennison; Clatsop and Yamhill, N. Huber. A. P. Dennison was elected president. House—Waymire and Boise, of Polk; Robinson and Buckingham, of Benton; Moores and McAlexander, of Lane; Hudson, of Douglas; Smith, Brown and Grant, of Linn; Grover, Harr-

pole and Harrison, of Marion; Risley and Officer, of Clackamas; Shuck and Burbank, of Yamhill; Harris, of Columbia; Callender, of Clatsop; Tichner, of Coos; Gates, of Wasco; Brown, of Multnomah; Johnson, of Washington; Jackson, of Multnomah and Washington; Cozad, of Umpqua; Smith, Barkwell and Briggs, of Jackson. Delazon Smith was elected speaker, and Thomas W. Beale chief clerk.

These members met in session at Corvallis. Consequent upon the ruling of the controller of the treasury as to the expenditure of money for public buildings, a bill was soon passed relocating the capital at Salem, followed by an immediate adjournment of the legislature to meet at that place. On December 22, 1855, the state house at Salem, with all its contents, was destroyed by fire, supposed to be the work of an incendiary. Another bill to submit the question of a state government to the people was passed by this legislature. The proposition was again defeated at the June election, in 1856, by a vote of four thousand and ninety-seven for to four thousand three hundred and forty-six against it. The following were elected members of the legislature at this election: Council—Washington, T. R. Cornelius, F. R. Bayley; Marion, Nat. Ford; Linn, Charles Drain; Douglas, Hugh D. O'Bryant; Marion, J. C. Peebles; Benton, A. A. Smith; Jackson, John Rose; Clackamas, James K. Kelly. James K. Kelly was elected president, and A. S. Watt chief clerk. House—John S. Miller, Thomas Smith, Jackson; A. M. Berry, Jackson and Josephine; Aaron Rose, Douglas, Coos and Curry; A. E. Rogers, D. C. Underwood, Umpqua; James Monroe and Robert Cochrane, Lane; A. J. Matthews, Josephine; Delazon Smith, H. L. Brown and William Ray, Linn; J. C. Avery and James A. Bennett, Benton; A. J. Welch, Walter M. Walker, Polk and Tillamook; L. F. Grover, William P. Harpole and Jacob Conser, Marion; A. L. Lovejoy, Felix M. Collard and William A. Starkweather, Clackamas; William Allen, Yamhill; George W. Brown, Multnomah; H. N. V. Johnson, Washington; Samuel E. Barr, Columbia; James Taylor, Clatsop. L. F. Grover was elected speaker, and D. C. Dade chief clerk.

An event occurred in Washington in 1856 which had some influence upon the political future of General Lane. Senator Brooks, of South Carolina, as it will be remembered, made a personal assault upon Senator Sumner, of Massachusetts, in the senate. Wilson, the colleague of Sumner, denounced the assault as an outrage in unmeasured terms. Brooks challenged Wilson, on account of the language he used in reference to that matter, and General Lane, as the friend of Brooks, was the bearer of the challenge. This created an impression in the public mind to some extent that Lane favored the conduct of Brooks.

Nominations for president and vice-president, preparatory to the November election of 1856, were made as follows: Democratic—James Buchanan, of Pennsylvania, for president; J. C. Breckinridge, of Kentucky, for vice-president. Republican—John C. Freemont, the Western explorer, for pres-

ident; W. L. Dayton, of New Jersey, for vice-president. Know-Nothing—Millard Fillmore, of New York, for president; A. J. Donnelson, of Tennessee, for vice-president. Buchanan and Breckinridge were elected.

In August, 1856, a convention was held at Albany to organize a republican party in Oregon. James Hogue was president, and Origin Thompson secretary of the convention. Among those present were Messrs. Conner, Whitson, Gallager, Condon and George. Their platform consisted of this resolution: "*Resolved*, That we fling our banner to the breeze inscribed, free speech, free labor, a free press, a free state and Freemont." Oregon at this time, of course, had no vote in the presidential election. George L. Curry was reappointed governor, and Benjamin F. Harding secretary of the territory in October of this year. The legislature elected in June assembled in Salem December 2, 1856. Governor Curry's message reviewed the events of the Indian war, opposed the removal of the capitol and favored the formation of a state government. A bill was passed at this session of the legislature providing that at the June election, 1857, the people should vote for and against a convention to form a state constitution, and at the same time vote for delegates to the convention. In case the convention carried, the delegates elected should meet at Salem on the third Monday in August, 1857, to form a state constitution. Convention carried by a vote of seven thousand two hundred and nine for to one thousand six hundred and sixteen against it, and the following delegates were elected to the constitutional convention: Benton, Henry B. Nichols, William Matzger, Haman C. Lewis, John Kelsey; Clackamas, J. K. Kelly, A. L. Lovejoy, William A. Starkweather, Hector Campbell, Nathaniel Robbins; Clatsop, Cyrus Olney; Curry, William H. Packwood; Columbia, John W. Watts; Coos, Perry B. Marple; Douglas, Matthew P. Deady, Stephen F. Chadwick, Solomon Fitzhugh, Thomas Whitted; Jackson, L. J. C. Duncan, John H. Reed, Daniel Newcomb, P. P. Prim; Josephine, L. B. Hendershott, William H. Watkins; Linn, Delazon Smith, Luther Elkins, Reuben S. Coyle, John T. Brooks, James Shields, J. Brattain; Lane, Paul Brattain, I. R. Moores, A. J. Campbell, Jessie Cox, W. W. Bristow, E. Hoult; Marion, L. F. Grover, George H. Williams, Davis Shannon, Nicholas Shrum, Joseph Cox, Richard Miller, John C. Peebles; Multnomah, S. J. McCormick, William H. Farrar, David Logan; Multnomah and Washington, Thomas J. Dryer; Polk, Reuben P. Boise, Benjamin F. Burch, F. Waymire; Polk and Tillamook, A. D. Babcock; Umpqua, Jesse Applegate, Levi Scott; Washington, E. D. Shattuck, John S. White, Levi Anderson; Wasco, C. R. Meigs; Yamhill, J. R. McBride, R. V. Short, R. C. Kinney, M. Olds.

General Lane was again the candidate of the democratic party for delegate in congress, and G. W. Lawson, of Yamhill, was an independent candidate against him. Slavery, like Aaron's rod, swallowed up all other questions at that time. Lawson was a somewhat eccentric individual, but a

pretty good speaker, and made a vigorous canvass, but Lane was the war horse of the democracy, and invincible. Lane was elected by a vote of five thousand six hundred and sixty-two to three thousand four hundred and seventy-one for Lawson. Based upon the possibility that the state government might be again defeated, the following persons were elected to a territorial legislature, which, with its unimportant session in December, were the closing scenes of Oregon as a territory: Council—Benton and Lane, Avery A. Smith; Jackson and Josephine, A. M. Berry; Linn, Charles Drain; Multnomah, Edward Shiel; Polk and Tillamook, Nathaniel Ford; Umpqua, Douglas, Coos and Curry, Hugh D. O'Bryant; Washington, Multnomah and Columbia, Thomas R. Cornelius; Wasco and Clackamas, Aaron E. Wait; Yamhill and Clatsop, Thomas Scott. House—Benton, Reuben C. Hill and James H. Slater; Clackamas, George Reese, F. A. Collard and S. P. Gilliland; Clatsop, Joseph Jefferies; Coos and Curry, T. J. Kirkpatrick; Columbia, Francis M. Warren; Douglas, Albert A. Matthew; Jackson, H. H. Brown, William M. Hughes; Josephine, J. G. Spear; Jackson and Josephine, R. S. Belknap; Linn, Anderson Cox, A. H. Cranor, H. M. Brown; Lane, John Whiteaker, J. W. Mack; Marion, Jacob Woodsides, George M. Able, Eli C. Cooley; Multnomah, William M. King; Polk and Tillamook, Benjamin Hayden; Polk, Ira F. M. Butler; Umpqua, James Cole; Washington and Multnomah, Thomas J. Dryer; Washington, H. V. N. Johnson; Wasco, N. H. Gates; Yamhill, Andrew Shuck and William Allen.

James Buchanan was inaugurated March 4, 1857. His message to congress was largely devoted to the absorbing slavery question, the fugitive slave law and the government of Kansas. His cabinet was as follows: Lewis Cass, of Michigan, secretary of state; R. M. T. Hunter, of Virginia, secretary of the treasury; John Appleton, of Maine, secretary of the interior; Howell Cobb, of Georgia, secretary of the navy; James A. Bayard, of Delaware, secretary of war; James D. Bright, of Indiana, postmaster-general.

I was reappointed chief justice of Oregon by Mr. Buchanan, but soon after resigned. Buchanan's appointments for Oregon, under the new state government, were as follows: M. P. Deady, United States district judge; A. J. Thayer, United States district attorney; D. B. Hannah, United States marshal. James W. Nesmith was superintendent of Indian affairs in 1857.

In February, 1857, there was a free state convention at Albany, of which W. T. Matlock was president, and L. Holmes secretary. All those who attended this convention were republicans. Whether Oregon should be a free or slave state, had now become the paramount issue in our local politics. A paper had been started at Corvallis, called The Messenger, to advocate the establishment of slavery in Oregon. I was a democrat, but in early life imbibed prejudices against slavery, that to some extent diluted my democracy. Many of the most influential democrats, with General Lane at their head, were active for slavery, and there was little or nothing said or done among the democrats on the other side of the question. I prepared and

published in the Oregon Statesman an address to the people, filling one page of that paper, in which I enforced, with all the arguments at my command, the inexpediency of establishing slavery in Oregon. I am not aware that any public speech or address was made on that question by any other democrat in the territory. Many democrats in private conversation expressed their opposition to slavery, but they spoke with "bated breath and whispering humbleness," for the dominating spirit in the democratic party was favorable to slavery. I flattered myself, vainly perhaps, that I had a fair chance to be one of the first United States senators from Oregon, but with this address that chance vanished like the pictures of a morning dream. I was unsound on the slavery question. On the third Monday of August, 1857, the constitutional convention assembled at Salem. Matthew P. Deady was elected president, Chester N. Terry secretary, John Baker sergeant-at-arms, and Asahel Bush printer. The standing committees were as follows: Legislative department—Boise, chairman; Lovejoy, Babcock, Chadwick, Watkins and Elkins. Executive department—Kelly, chairman; Farrar, Reed, Kelsey, Brattain of Lane, Dryer and McBride. Judicial department—Williams, chairman; Olney, Boise, Kelly, Grover, Logan and Prim. Military affairs—Kelsey, chairman; Whitted, Burch, Moores, Scott, Coyle and Matzger. Education and school lands—Peebles, chairmain; Boise, Lockhart, Shattuck, Starkweather, Kinney and Robbins. Seat of government and public buildings—Boise, chairman; Prim, Campbell of Lane, Lewis, Olney, Chadwick and Shannon. Corporations and internal improvements—Meigs, chairman; Williams, Elkins, Hendershott, Campbell of Clackamas, Bristow and Miller. State boundaries—Lovejoy, chairman; Meigs, Olney, Newcomb, Applegate, Anderson and Watts. Suffrage and elections—Smith, chairman; Babcock, Brattain of Linn, Cox of Marion, Dryer, Olds and White. Bill of rights—Grover, chairman; Reed, Waymire, McCormick, Brooks, Shrum and Fitzhugh.

The chief speakers in the convention were Smith, Dryer, Boise, Kelly, Grover, Deady, Logan, Olney, Farrar and Waymire. I also took some part in the debates. All the different provisions of the constitution were quite thoroughly discussed, and, on the part of some of the speakers, with no little ability. The constitution as a whole was adopted by the convention on the eighteenth day of September, 1857, by a vote of thirty-five for to ten against it. Those voting against it were: Anderson, Dryer, Farrar, Hendershott, Kinney, Logan, Olds, White, Watts and Watkins. Those absent and not voting were: Applegate, Bristow, Campbell of Lane, Chadwick, Lewis, McBride, Meigs, Nichols, Olney, Prim, Reed, Short, Shrum, Shattuck and Scott. Mr. Applegate, at an early day, became dissatisfied with the proceedings of the convention and left it. The schedule of the constitution provided that the question as to whether or not Oregon should be a slave state should be submitted to the people at the time they voted upon the constitution, and it also provided for a vote by the people at the same time as to

whether or not free negroes should be allowed to come into and reside within the state. The constitution was adopted by a vote of seven thousand one hundred and ninety-five for to three thousand one hundred and ninety-five against it. Slavery was defeated by a vote of two thousand six hundred and forty-five for to seven thousand seven hundred and twenty-seven against it, and the exclusion of free negroes carried by a vote of eight thousand six hundred and forty for to one thousand and eighty-one against it. Many of those who voted for the exclusion of free negroes were at heart opposed to the policy, but it was considered necessary to throw this tub to the whale of the proslavery party to secure the success of the free state clause of the constitution.

On the sixteenth of March, 1858, a democratic state convention assembled at Salem to nominate candidates for office under the new state government. James W. Nesmith was chairman, and Shubrick Norris secretary. L. F. Grover was nominated for representative in congress, John Whiteaker for governor, L. Heath for secretary of state, John D. Boon for treasurer, Asahel Bush for state printer, M. P. Deady for judge of the first district, R. E. Stratton for judge of the second district, R. P. Boise for judge of the third district, A. E. Wait for judge of the fourth district, A. C. Gibbs prosecuting attorney for the first district, J. N. Smith for the second, H. Jackson for the third, C. R. Meigs for the fourth. April 2, 1858, a republican convention assembled at Salem and nominated John Denny for governor, John R. McBride for representative in congress, Leander Holmes for secretary of state, E. L. Applegate for state treasurer and D. W. Craig for state printer. Their resolutions declared that slavery was a state and not a national institution; denounced the Dred Scott decision, and the Kansas policy of the Buchanan administration; antagonized the democratic state platform and the *viva voce* mode of voting, and favored a Pacific railroad. April 8, a national democratic convention, as it called itself, assembled at Salem and nominated James K. Kelly for representative in congress, E. M. Barnum for governor, A. E. Rice for secretary of state, Joseph L. Bromley for treasurer, and James O'Meara for state printer. Their resolutions approved the national democratic platform of 1856, and extolled President Buchanan and Gen. Joseph Lane. On May 21 Denny and McBride published a card declining to be candidates.

The split in the democratic party was due to several causes, some personal and some political. Mr. Bush, as editor of the Oregon Statesman, wielded a vigorous and caustic pen, and any democratic laggard or recusant was pretty sure to feel the lash of that paper. This made a considerable number of soreheads in the party. Then, there was an antagonism in the party to what was called the "Salem clique." This clique was understood to consist of the following persons: Asahel Bush, J. W. Nesmith, B. F. Harding, R. P. Boise, L. F. Grover, and their close adherents. It was claimed that these gentlemen were using the party for themselves and their

friends, and, as they were all free state men, it was thought by some that they were not as friendly to General Lane as they might be. Last, but not least, there were more aspirants for office than there were offices to fill. All the elements of opposition to the "Salem clique" fused in support of the ticket headed by Colonel Kelly. The chief canvassers for that ticket were Colonel Kelly and James O'Meara, and the chief canvassers for the Grover and Whiteaker ticket were L. F. Grover and Delazon Smith. I made some speeches in different parts of the state for the Grover and Whiteaker ticket. One of the chief topics of discussion in this canvass was the fifth and sixth resolution of the state democratic platform. These resolutions were ironclad as to the duty of democrats to support the nominations of the convention and caucuses of the party. Colonel Kelly and O'Meara vigorously attacked these resolutions and claimed that they were intended to subjugate the democratic party to the dictation of the "Salem clique." The supporters of the Grover and Whiteaker ticket claimed that they were necessary to the integrity of the party. The contest was characterized by bitter personalities, and among the party newspapers the "maddening wheels of fury raged." Grover and Whiteaker were elected; Grover receiving five thousand eight hundred and fifty-nine votes to four thousand one hundred and ninety for Kelly, and Whiteaker five thousand seven hundred and thirty-eight votes to four thousand one hundred and fourteen for Barnum. The following constituted the membership of the legislature of 1858: Senate—Jackson, A. M. Berry; Lane, W. W. Bristow and A. B. Florence; Washington, Clatsop, Columbia and Tillamook, T. R. Cornelius; Marion, E. L. Colby and J. W. Grimm; Linn, C. Drain and L. Elkins; Douglas, J. F. Gazley; Yamhill, J. Lamson; Benton, J. S. McIteeny; Wasco, J. S. Ruckel; Josephine, S. R. Scott; Umpqua, Coos and Curry, —. Wells; Multnomah, J. A. Williams; Polk, F. Waymire. House—D. B. Hannah, of Clackamas; Robert Morrison, of Clatsop and Tillamook; Nelson Hoyt, of Columbia and Washington; William Tichner, of Coos and Curry; L. Norris and A. J. McGee, of Douglas; James H. Slater and Henry B. Nichols, of Benton; John W. McCauley, Daniel Newcomb and W. G. T'Vault, of Jackson; D. S. Holton, of Josephine; A. J. Crugan, R. B. Cochran and A. S. Patterson, of Lane; L. H. Cranor, J. T. Crooks, E. E. McMich and T. T. Thomas, of Linn; B. F. Bonham, B. F. Harding, J. H. Lasater and John Stevens, of Marion; T. J. Dryer and A. D. Shelby, of Multnomah; B. F. Burch and J. K. Wait, of Polk; J. M. Cozad, of Umpqua; Wilson Bowlby, of Washington; Vic. Trevett, of Wasco; Andrew Shuck, of Yamhill. These members assembled at Salem July 5, 1858. Luther Elkins was elected president of the senate, and E. Carpenter secretary. W. G. T'Vault was chosen speaker of the house, and C. N. Terry chief clerk. Most of the time of this session was spent in discussion about the removal of the capital. On the seventh day of July Joseph Lane was elected United States senator in congress by a vote of

forty-five to four blank votes, and Delazon Smith by a vote of thirty-nine to eight for David Logan.

In April, 1859, a democratic convention was held at Salem by which Lansing Stout was nominated for congress. The resolutions approved the democratic national platform of 1856, endorsed the Dred Scott decision, and the administration of James Buchanan. In the same month a republican convention was held at the same place by which David Logan was nominated for congress. A. G. Hovey, W. Warren and Leander Holmes were chosen as delegates to the national republican convention, and instructed to vote for William H. Seward as the republican candidate for president. The resolutions were against slavery in the territory, favored a Pacific railroad, internal improvements and a protective tariff. Stout was elected over Logan by a majority of sixteen. Logan and Stout were both young men of fine abilities and good lawyers, but their unfortunate habits blasted their bright prospects for future usefulness and distinction.

Governor Whiteaker called a special session of the legislature in May, 1859, and stated in his message that the object of the session was to adapt the existing laws to the new state government, and elect a United States senator in place of Delazon Smith, whose term had expired. General Lane had drawn the long term which ended March 3, 1861, and Smith the short term which ended March 3, 1859. On the fourteenth day of February, 1859, Senators Lane and Smith and Representative Grover took their seats in congress. This special session, after a good deal of wrangling, adjourned without any election.

Preparatory to the June election in 1860, a republican state convention was held at Salem, at which David Logan was again nominated for congress. The resolutions were similar to those of 1859, with a strong protest against the Dred Scott decision. A democratic convention was held at Eugene City, at which there was a serious disagreement among the delegates. Several counties had decided that the state democratic convention had not given them the number of delegates to which they were entitled, and as the convention decided to adhere to the apportionment made by the committee, several delegates withdrew from the convention, after which George K. Shiel was nominated for congress, and Joseph Lane, M. P. Deady and Lansing Stout were chosen delegates to the national democratic convention, and instructed to vote for General Lane as the democratic candidate for president. Shiel was elected with seventy-six majority over Logan. The agitation of the slavery question had now reached a crisis. The good Lord and good devil style of politics had become disgusting. I made up my mind that, as far as my opportunities allowed, I would resist the further aggression of the slave power and oppose the election to office of those who favored it. Accordingly, in the month of March, 1860, I went into Linn county, to the residence of Delazon Smith, and said to him: "Delazon, I have come here to beard the lion in his den (Smith's friends called

him the 'Lion of Linn'); I am going to canvass Linn county, and my object is to beat you and General Lane for the senate. Come on and make your fight." He good-naturedly accepted the challenge, and we traveled on horseback to all parts of Linn county, through the rain and mud, speaking every day, sometimes in the afternoon and sometimes in the evening, and, as the accommodations in those days were somewhat limited, we generally occupied the same bed at night. When I go back in my thoughts to that campaign, I do not think of the rain, mud and hard work, but I think of the solid comfort I experienced when, hungry, wet and weary, I was welcomed to the warm hospitalities of the pioneer families of Linn county. Colonel Baker came to Oregon some time in the winter of 1859, and he and Dryer made speeches for the republican ticket, but I believe I was the only democrat who made a general canvass, especially against the election of Lane and Smith.

On September 11, 1860, the legislature convened at Salem, and consisted of the following members: Senate—Thomas R. Cornelius, of Washington; William Tichner, of Umpqua, Coos and Curry; William Taylor, of Polk; Solomon Fitzhugh, of Douglas; D. S. Holton, of Josephine; John R. McBride, of Yamhill; James Monroe, of Lane; John A. Williams, of Multnomah; Luther Elkins and H. L. Brown, of Linn; A. B. Florence, of Lane; J. W. Grimm and E. F. Colby, of Marion; J. S. McHeeney, of Benton; A. M. Berry, of Jackson. Luther Elkins was elected president. House—S. E. Martin, of Coos and Curry; C. J. Trenchard, of Clatsop and Tillamook; Reuben Hill and M. H. Walker, of Benton; R. A. Cowles and James F. Gazley, of Douglas; J. Q. A. Worth, Bartlett Curl, Asa McCully and James P. Tate, of Linn; Joseph Bayley, John Duval and R. B. Cochran, of Lane; G. W. Keeler, J. B. White and J. N. T. Miller, of Jackson; Ira F. M. Butler and C. C. Cram, of Polk; Robert Mays, of Wasco; B. Stark and A. C. Gibbs, of Multnomah; A. Holbrook, W. A. Starkweather and H. W. Eddy, of Clackamas; Samuel Parker, Robert Newell, C. P. Crandall and B. F. Harding, of Marion; M. Crawford and S. M. Gilmore, of Yamhill; Wilson Bowlby, E. W. Conger, of Washington; J. W. Huntington, of Umpqua; and George T. Vining, of Josephine. B. F. Harding was elected speaker of the house.

Soon after the legislature assembled it became apparent that there was to be a fusion between the Douglas democrats, as they were called, and the republicans, in consequence of which Senators Berry, Brown, Florence, Fitzhugh, Monroe and McIteeney, friends of Lane and Smith, vacated their seats, and, as the saying was then, "took to the woods." This left the senate without a quorum. Warrants were issued for their arrest, but they were not found. Governor Whiteaker made an earnest and patriotic appeal to the absentees to return, and after an absence of ten or twelve days they resumed their seats in the senate. Soon after, a joint convention was held for the election of United States senators. There were fourteen ballots.

and the votes, with some scattering, were about equally divided between J. W. Nesmith, E. D. Baker and George H. Williams. On the fourteenth ballot some of my supporters, under the pressure of the Salem clique, went over to Nesmith, and he was elected. The vote on the final ballot stood: For the long term, twenty-seven for Nesmith to twenty-two for Deady. For the short term, twenty-six for Baker to twenty for George H. Williams.

James W. Nesmith for many years was a conspicuous figure in the politics of Oregon. He was a man of keen and ready wit, without much cultivation or refinement. He had a wonderful faculty of seeing the ridiculous side of things, and this faculty sometimes worked to his personal disadvantage. He was my colleague in the senate for two years. He was an ardent friend of Andrew Johnson, and I was his determined enemy. He secured nominations from the president, and I defeated them in the senate. This exasperated Nesmith and he became and for many years was my malignant enemy, and as a representative in congress did what he could with the help of some prominent republicans of Oregon to prevent my confirmation by the senate when I was nominated for chief justice by General Grant. But I am happy to say that before his last illness our friendly relations were reëstablished, and while he was sick he wrote me a pathetic letter begging me to help him out of his imaginary troubles. He stood nobly by the administration of Mr. Lincoln in the prosecution of the war, and of the democrats in the senate voted alone for the constitutional amendment to abolish slavery, for which he deserves to be remembered with praise by the people of Oregon.

When the democratic national convention assembled at Charleston, on account of the resolutions adopted by the convention the delegates from the slave-holding states withdrew and organized a convention of their own. Oregon and California went with them. They nominated John C. Breckinridge for president and Joseph Lane for vice-president. Their resolutions affirmed that the constitution of the United States carried slavery into the territories and protected it there irrespective of any legislation by congress or the people of a territory, denounced opposition to the fugitive slave law, favored the acquisition of Cuba, and a Pacific railroad. The other delegates adjourned to Baltimore, where they nominated Stephen A. Douglas for president and Herschel V. Johnson for vice-president. Their resolutions affirmed the democratic platform of 1856, and recognized the rightfulness and validity of the fugitive slave law. The republican convention at Chicago nominated Abraham Lincoln for president and Hannibal Hamlin for vice-president. Their platform opposed the extension of slavery into the territories, but was quite conservative in other respects. A convention was held at Nashville at which John Bell was nominated for president and Edward Everett for vice-president. Though their platforms were somewhat different, there was in fact no essential difference between the republicans and Douglas democrats upon the slavery question. The Breckinridge and Lane party affirmed in effect that the constitution established and protected

slavery in the territories of the United States. This the Douglas democrats denied. This was the real issue of the campaign.

Dryer in The Oregonian stigmatized the Douglas democrats as the abolition wing of the democratic party. The presidential electors for Lincoln were Thomas J. Dryer, B. J. Pengra and Wm. Watkins. For Breckinridge, James O'Meara, D. W. Douthit and Delazon Smith. For Douglas, Ben. F. Hayden, William Farrar and Bruce. For Bell, John Ross, S. Elsworth and Greer. There were numerous speakers in the field. Baker, Dryer, Woods and others for Lincoln; Smith, O'Meara and others for Breckinridge; Hayden, Farrar, Garfield and others for Douglas. I supported Douglas and canvassed for him, not so much to defeat Mr. Lincoln, whose election seemed altogether probable, as to pursuade as many democrats as I could to withhold their votes from Breckinridge and Lane. Lincoln carried the state, and was elected president. The vote stood in Oregon, five thousand two hundred and seventy for Lincoln, five thousand and six for Breckinridge, three thousand nine hundred and fifty-one for Douglas, and one hundred and eighty-three for Bell.

President Lincoln organized an able cabinet as follows: William H. Seward, secretary of state; Salmon P. Chase, secretary of the treasury; Simon Cameron, secretary of war; Gideon Wells, secretary of the navy; Caleb B. Smith, secretary of the interior; Montgomery Blair, postmaster-general, and Edward Bates, attorney-general.

Mr. Lincoln's appointments for Oregon were as follows: District attorneys—E. D. Shattuck, April 2, 1862; E. W. McGraw, January 26, 1863; Joseph N. Dolph, January 30, 1865; United States marshal, William H. Bennett; surveyor-general, B. J. Pengra; superintendent of Indian affairs, W. H. Rector; collector of customs at Astoria, William L. Adams; William Matlock, receiver, and W. A. Starkweather, register of the land office at Oregon City.

The defeat of General Lane for vice-president closed his political career. I was quite well acquainted, though not intimate, with General Lane. I have never known a man in Oregon to whom the Latin maxim, *Suaviter in modo, fortiter in re*, (gentle in manners, brave in deed), could with more propriety be applied. He had all the essential qualifications of a successful politician, and if he had not been so imbued with a desire to extend slavery, might, in all human probability, have represented Oregon in the senate as long as he lived. He was intensely southern in all his feelings and sympathies, a devoted friend to Jefferson Davis, and opposed to coercive measures to preserve the union. I sincerely believed he was wrong and opposed him upon that ground, but it is due to his memory to say that he had, what many shifty politicians have not, the courage of his convictions, and he stood by them to the bitter end. Delazon Smith, having identified himself with the fortunes of General Lane, went down with them. I knew Delazon Smith in

Iowa as an infidel lecturer, a democratic politician and a Methodist preacher. He was a man of generous impulses and many intellectual gifts; socially a charming and most companionable man, and personally I liked him very much. As a stump orator, with the exception of Colonel Baker, there has never been his equal in the state of Oregon, but he lacked stability and strength of character. He was better fitted to follow than to lead men.

In Oregon, as well as elsewhere, 1861 was a year of excitement. The war and anti-war feeling was at fever heat. Every hill and valley found a tongue, and fiery speeches were made for and against the government.

Colonel Baker was killed at Ball's Bluff in 1861. He canvassed Iowa in 1848 for Taylor. I was then judge of the first judicial district of that state, and had an opportunity to hear him at several places where I was holding court. I also heard him in this state. I have heard a good many men make speeches who were distinguished for their oratory, but the most eloquent man I ever heard was Edward D. Baker. He was admirable in form and features, had a clear, ringing, silvery voice, and could soar into the regions of imagination with more brilliancy and come down to the solid facts of a speech with a better grace than any man I ever knew. His death was a great loss to the country. Governor Whiteaker appointed Benjamin F. Stark to succeed Colonel Baker in the senate. Stark was a disciple of General Lane. Affidavits were forwarded to the senate from Oregon to show his disloyalty, but after considerable hesitation over the matter he was admitted to his seat. I can say of Senator Stark what Judge Black said of Justice Hunt, of the supreme court: "He was a very lady-like personage."

In January, 1862, a call was issued for a union state convention to be held at Eugene City on the ninth of April. This call was signed by H. W. Corbett, E. D. Shattuck and W. C. Johnson, republican state committee, and by Samuel Hanna, claiming to be chairman of the democratic state committee, and by the following persons, most of whom had been classed as democrats: J. J. Hoffman, A. C. Gibbs, W. S. Ladd, A. M. Starr, S. G. Reed, S. J. McCormack, Alonzo Leland, John McCraken, R. J. Ladd, A. C. R. Shaw, H. J. Geer, Dav. Powell, W. H. Farrar, A. Dodge, Lucien Heath, Joseph Cox, R. C. Geer, A. B. Hallock, James H. Lappeus, George H. Williams, B. F. Harding, E. Williams, B. Simpson, I. R. Moores, E. N. Cooke, H. M. Thatcher, David McCully, L. E. Pratt, H. Rickey, James Shaw, Joseph Magone, A. C. Daniels, J. W. McCully, Thomas Strang, H. Zanklosskey, T. B. Rickey, William Graves, E. N. Terry, A. L. Lovejoy, J. S. Rinearson, R. P. Boise, D. P. Thompson, L. F. Cartee, C. P. Crandall, A. F. Waller.

J. J. Hoffman, whose name heads this list, was a clerk in my office, and A. C. Gibbs, whose name stands second, was my law partner. Pursuant to the above named call, a convention was held at Eugene consisting of the following delegates: Benton—A. J. Thayer, J. R. Bayley, W. B. Spencer, M. Woodcock, A. G. Hovey. Clackamas—A. L. Lovejoy, W. Carey Johnson, M. C. Ramsby, S. Huelet, W. S. Dement, J. T. Kerns. Clatsop—William

L. Adams. Columbia—E. W. Conyers. Douglas—T. B. King, W. T. Baker, T. R. Hill, E. A. Lathrop, J. Kelly, S. B. Briggs, James F. Watson, R. Reil. Jackson—L. A. Rice, James Burpee, W. W. Fowler, W. S. Hayden, S. Reddick, J. C. Davenport, J. B. Wrisley, E. S. Morgan, O. Jacobs, C. Heppner. Josephine—H. L. Preston, D. S. Holton, Jacob Mendenhall, J. S. Dunlap, Thomas Floyd, W. Mulvaney. Lane—W. W. Bristow, R. E. Stratton, J. M. Gale, B. J. Pengra, E. L. Applegate, N. Humphrey, G. H. Murch, J. McFarland. Linn—Hiram Smith, Daniel Froman, William McCoy, J. M. Elliott, L. Fanning, D. B. Randall, John Smith, A. Hannen, O. W. Richardson, T. A. Riggs. Marion—I. R. Moores, E. N. Cooke, A. Bush, S. Brown, B. F. Harding, E. Williams, George A. Edes, Joseph Magone, J. W. Grimm, P. A. Davis, W. Shannon, William Chase. Multnomah—A. M. Starr, T. H. Pearne, H. W. Corbett, A. C. R. Shaw, S. M. Smith, David Powell, William H. Watkins, George H. Williams. Polk—J. D. Holman, W. C. Warren, J. D. Collins, B. Simpson, S. J. Gardner. Umpqua—Jesse Applegate, R. H. Lord. Wasco—William Logan, James H. O'Dell, J. H. Wilbur, Z. M. Donnell. Washington—Wilson Bowlby, A. Hindman, W. B. Adcock, I. Hall. Yamhill—Joel Palmer, W. B. Breyman, J. R. Bean, Joseph Sanders, J. B. Condon, W. B. Daniels. Coos and Curry—William Tichner, T. D. Winchester. A. L. Lovejoy was president, and C. N. Terry secretary.

The convention made the following nominations:

John R. McBride for congress; A. C. Gibbs for governor; Samuel May for secretary of state; Harvey Gordon for state printer; Edwin N. Cook for state treasurer; E. D. Shattuck for judge of the fourth district; James F. Gazley for prosecuting attorney, first district; A. J. Thayer for second district; J. G. Wilson, third district, and W. C. Johnson for the fourth district. The convention appointed the following as an executive committee for the campaign: Henry Failing, B. F. Harding, Hiram Smith, George H. Williams and S. Huelet.

A democratic convention at Eugene on the sixteenth of April, 1862, nominated for congress, A. E. Wait; for governor, John F. Miller; for state printer, A. Noltner.

The campaign was conducted with great spirit and much ill-feeling. War was in the hearts of our people as much as it was elsewhere, but we fought it out with ballots and not with armed forces and bloodshed. Ex-Governor Curry conducted a paper in Portland called the Advertiser, which vehemently opposed the war and the administration of Lincoln, and W. L. Adams conducted a red-hot republican paper at Oregon City called the Oregon Argus, in which he hammered his political opponents with merciless severity. The Statesman and The Oregonian were on the same side in this fight. The whole union ticket was elected by an average majority of three thousand. The total vote in Portland was six hundred and seventy—four hundred and sixty for McBride and two hundred and ten for Wait.

The legislature elected in June assembled in Salem, September 8, 1862, and consisted of the following members:

Senate — Benton, A. G. Hovey; Linn, Bartlett Curl, D. W. Ballard; Marion, J. W. Grim, William Greenwood; Washington, Columbia, Clatsop and Tillamook, Wilson Bowlby; Lane, Campbell E. Chrisman; Multnomah, John H. Mitchell; Coos, Curry and Umpqua, Joseph W. Drew; Jackson, Jacob Wagner; Clackamas and Wasco, James K. Kelly; Yamhill, John R. McBride: Polk, William Tayler; Lane, James Monroe; Josephine, D. S. Holton. Wilson Bowlby was elected president, and Samuel Clarke chief clerk.

House — Jackson, E. L. Applegate, J. D. Haines, S. D. Van Dyke; Josephine, J. D. Fay; Douglas, R. Mallory, James Watson; Umpqua, W. H. Wilson; Coos and Curry, Archibald Stevenson; Lane, S. V. McClure, A. A. Hemingway, M. Wilkins; Benton, A. N. Withan, C. P. Blair; Linn, H. D. Brown, John Smith, William McCoy, A. A. McCully; Marion, I. R. Moores, Joseph Engle, C. A. Reed, John Minto; Polk, B. Simpson, G. W. Richardson; Yamhill, Joel Palmer, John Cummings; Washington, R. Wilcox; Washington and Columbia, E. W. Conyers; Clackamas, F. A. Collard, M. Ramsby, J. T. Kean; Multnomah, A. J. Dufur, P. Wasserman; Clatsop and Tillamook, P. W. Gillette; Wasco, O. Humason. Joel Palmer was elected speaker, and S. T. Church chief clerk.

A joint convention was held for the election of a senator to fill the unexpired term of Colonel Baker. The vote for a long time was about equally divided between B. F. Harding and George H. Williams, with a few votes for the Rev. Thomas H. Pearne, but the Salem clique were too much for me again, and on the thirtieth ballot Harding was elected.

Public attention was absorbed by the war in 1863, and there were no political movements of any note in Oregon in that year. In March, 1864, a union convention was held at Albany, of which Wilson Bowlby was president and W. C. Whitson secretary. J. H. D. Henderson was nominated for congress; George L. Woods, N. H. George and J. F. Gazley for presidential electors. Delegates to the national convention were Thomas H. Pearne, J. W. Souther, M. Hirsch, Josiah Failing, H. Smith and T. Charman. They were instructed to vote for the renomination of Abraham Lincoln. R. E. Stratton was nominated for judge of the second judicial district and James F. Watson for district attorney. In the third district, R. P. Boise was named for judge and Rufus Mallory for district attorney, and in the fifth district, J. G. Wilson for judge and C. R. Meigs for district attorney.

In April a democratic convention was held at Salem. James K. Kelly was nominated for congress; A. E. Wait, S. F. Chadwich and Benjamin F. Hayden for presidential electors. Delgates to the national convention were Benjamin Stark, William Higbee, William McMillen, Jefferson Howell, John Whiteaker, N. T. Caton. S. Ellsworth was nominated for judge of the second district, J. S. Smith for the third and J. H. Slater for the fifth. The

union ticket was elected by an average majority of two thousand five hundred. Some of those who were in the union ranks in 1862 fell out in 1864 on account of the emancipation proclamation of Mr. Lincoln.

The republican national convention nominated Abraham Lincoln for president and Andrew Johnson for vice-president. The resolutions approved the administration of Lincoln and favored a vigorous prosecution of the war. The democratic national convention nominated George B. McClellan for president and George H. Pendleton for vice-president. The resolutions declared the war a failure, demanded the cessation of hostilities and a convention of the states to settle the pending difficulties.

On September 12, 1864, the legislature elected in June assembled at Salem and consisted of the following members:

Senate — Douglas, Coos and Curry, G. S. Hinsdale; Washington, Columbia, Clatsop and Tillamook, Thomas R. Cornelius; Baker and Umatilla, James M. Pyle; Wasco, Z. Donnell; Yamhill, Joel Palmer; Polk, John A. Fraser; Clackamas, H. W. Eddy; Douglas, James Watson; Josephine, C. M. Cardwell; Marion, John W. Grim and William Greenwood; Linn, Bartlett Curl and D. W. Ballard; Lane, S. B. Crabsten and C. E. Chrisman; Multnomah, John H. Mitchell; Jackson, Jacob Wagner. John H. Mitchell was elected president, and E. P. Henderson chief clerk.

House — Baker, Daniel Chaplin, Samuel Colt; Benton, J. Quin Thornton, J. Gingles; Clackamas, Owen Wade, E. T. T. Fisher, H. W. Shipley; Columbia, Clatsop and Tillamook, P. W. Gillette; Coos and Curry, Isaac Hacker; Douglas, Alpheus Ireland, E. W. Otey, P. C. Parker; Jackson, James D. Fay, W. F. Songer, Thomas F. Beale; Josephine, Isaac Cox; Lane, J. B. Underwood, G. Gallison, A. McCormack; Linn, J. P. Tate, J. N. Parker, P. A. McCartney, Robert Glass; Marion, I. R. Moores, J. J. Murphy, H. L. Turner, J. C. Cartwright; Multnomah, P. Wasserman, L. H. Wakefield; Polk, C. LaFollett; Umatilla, Lafayette Lane; Washington, Wilson Bowlby, D. O. Quick; Wasco, A. J. Borland; Yamhill, G. W. Lawson, Henry Warner. I. R. Moores was elected speaker, and J. L. Collins chief clerk.

Circumstances seemed to indicate that Thomas H. Pearne or George H. Williams would be elected to the senate by this legislature, and with this in view we canvassed the state together, both of us advocating the election of Mr. Lincoln. Mr. Pearne was an able man and a fine speaker. I found in him a formidable competitor for the office. I was elected on the third ballot, the vote standing thirty-one for Williams, sixteen for Pearne, six for John F. Miller and two for Watkins. Bush, Nesmith, Harding and many others who had been identified with the union party, supported McClellan. Mr. Lincoln carried the state by about one thousand four hundred majority. On the fourth of March, 1865, I took my seat in the senate of the United States.

My task ends here. Many, and indeed a large majority, of those I have named in this paper have finished their earthly career, and the evening

shadows are rapidly closing around those who survive. I trust those who come forward to take our places will think kindly of what we have done, and strive to improve upon our work. I have had my full share of the ups and downs incident to political life, but there are no sore places in my memory. I am grateful to the Giver of All Good and the people of Oregon for the honor and good things I have enjoyed here, and my earnest desire is that God will bless this beautiful state in all its years and in all its borders with plenteousness and peace, and that righteousness, justice and truth may characterize and exalt its future history.

WOMAN IN OREGON HISTORY.

BY ABIGAIL SCOTT DUNIWAY.

The scientific world is slowly but surely returning to the original order of human affairs in its attempt to reëstablish the natural relations between the sexes, in which man and woman are the supplements, the counterparts, but never the opponents of each other. When God saw, in the beginning, "that it was not good for man to be alone," and created woman as his companion, counsellor and co-worker, the influence of our sex in molding the affairs of state and of nation began; and, no matter how much or how often perverted or hindered, the darkest age has never wholly destroyed it.

The great Author of human destiny understood this fundamental law when He placed fathers and mothers, brothers and sisters in the same home and family, and permitted each sex to associate with the other on a plane of governmental, social and domestic equality.

Often, in these latter years, when I have been addressing audiences in the cities of the middle west, and in the east and south, I have been asked why it was that the Pacific Northwest was so far in advance of the older settled portions of the United States in its recognition of the divine principle of equality of rights between the sexes, which originated in the human home. To this query I am always proud to reply that the territorial domain of Oregon was the first great section of our federal union in which woman's equal right to occupy and possess real estate, in fee simple, and on her own individual account, had ever been recognized or practiced.

All great uprisings of the race, looking to the establishment of a larger liberty for all the people, have first been generated in new countries, where plastic conditions adapt themselves to larger growths. It has ever been man's province to go before, to find the path in the wilderness and blaze the way for those who are to follow him. It is man's mission to tunnel the mountains, rivet the bridges, build the highways, erect the habitations, navigate the seas and subdue and cultivate the soil. It has ever been the province of woman to take joint possession with him of the crude homes that he has builded, and add to the rude beginnings of his border life those feminine endeavors through which, as the community increases in numbers, a higher civilization asserts itself; and, as it grows in years and riches, the wilderness is made to blossom as the rose.

The interests of the sexes can never be identically the same; but they are always mutual, always interdependent, and every effort to separate them results, primarily, in discontent and ultimately in failure.

When the true history of woman's agency in upbuilding the state of Oregon shall have been written, the world will marvel at the sublimity of the inspiration of the man, or men, who gave to the seal of the state its enduring motto, *alis volat propriis*, or "she flies with her own wings."

You have heard on this brilliant and important occasion a great many spirited, time-honored and true rehearsals of the valiant deeds of Oregon's pioneer and public-spirited men. No one reveres or honors more sincerely than I the noble courage, the sturdy manhood, the spirit of enterprise displayed by the men whose names are inseperable from the history of this state's upbuilding. It required men of brave hearts and firm footsteps to lead the way in the vast enterprises that have culminated, after all the weary years that we are here to commemorate, in this realization of our forty years of statehood. Their deeds of daring, danger and endurance have long been chronicled in song and story. Many of their honored effigies look down upon us today from enduring canvas upon these tinted walls. Their silent images speak to us in rugged, yet kindly outlines of bygone days, when, in their vigorous, ambitious youth, they crossed a barren, almost trackless continent, encountering roaring rivers and rock-ribbed mountains, inhabited only by wild beasts and wilder savages. They speak to us of the prophetic vision with which they discerned this goodly land, long ere their eyes beheld the vernal shore "Where rolls the Oregon."

Other speakers have extolled the spirit of adventure characteristic of our Anglo-Saxon stock; a spirit which led men, like these, to hew their way through a perilous, toilsome pilgrimage to this summer land of the sundown seas. But many were the women, daily companions of these men of valor, with lives equal to theirs in rectitude and energy, whose names, as yet, have found no place in song and story, who did their part as bravely as did any man: and their memory remains today enshrined only in the hearts of rustic neighbors, or of their descendants who knew and loved them in their obscurity. Many, and yet, alas, how few, will linger but a few years longer to gaze with dimming vision upon the serrid ranks of our annual parades of men who will march together with faltering steps at our regular reunions, until at last there shall be left no more survivors of our early pioneers.

What further shall we say of the women of Oregon, the wives, mothers and sweethearts of those once mighty men who are soon to vanish from human sight? Have they not as nobly and bravely borne their part as did the men? Were they not as faithful as they in building up this vigorous young commonwealth of the Pacific Northwest, which, today, includes the added states of Washington, Montana and Idaho, that together with this mother of states originally comprised the whole of Oregon?

That British Columbia obtained a valuable part of our Pacific Northwest territory while your humble speaker was yet a child, is a part of our history of which I cannot stop to speak. All of you older Oregonians can still re-

member that spirited campaign cry of your youth, whose refrain was "Fifty-four-forty, or fight." The younger Oregonians can read it in school histories.

I have before paid tribute to the bravery and endurance of man in subduing the primeval wilderness. It is now my grateful privilege to recognize woman's part, often more difficult and dangerous because accompanied by the added perils of maternity, and always as important as man's in building up a state from its crude beginnings into such fruition as we now behold.

We cannot forget the heroism of the women of the Whitman party, who were both victims and survivors of that historic and horrible massacre. We delight to honor the valor of those intrepid mothers of the mighty men of today and yesterday, who crossed the untracked continent in ox wagons or on horseback, some of whom have lived to see their native sons and daughters take proper place as living monuments in commemoration of those days that tried women's souls. We cannot forget the faithful bravery of the lone woman in a rough log cabin in the beautiful hills of Southern Oregon who, when her busband lay dead at her feet, from the treacherous aim of a cruel savage, kept the howling despoilers of her home at bay with her trusty rifle till the daylight came and brought her succor from the neighboring hills.

But my time is limited, and I cannot linger over facts already familiar to you all. Let it rather be my province to speak of those mothers in Oregon whose patient endurance of poverty, hardship and toil brought them naught of public and little of private recompense, but whose children rise up and call them blessed, and whose husbands are known in the gates when they sit among the rulers of the land.

I have spoken of the inspiration that gave to us and to posterity the motto of the state seal of Oregon. But there was another inspiration, first voiced by Dr. Linn, of venerable memory, from whom one of our fairest and richest counties derived its name, and was afterward put into practical shape in congress by Delegate Samuel R. Thurston. It was an inspiration that placed Oregon as the star of first magnitude in our great galaxy of states, causing her to lead in recognizing woman's inalienable right, as an individual, to the possession and ownership of the soil, irrespective of gift, devise or inheritance, ante-nuptial settlement, or any sort of handicap or special privilege whatsoever. I allude to the donation land law. A dozen years ago, before my frequent journeyings had taken me from Oregon (as they have often done in later years), I became acquainted with hundreds of Oregonians over the state, some of whom are doubtless present at this hour, many of whom assured me with pride, and all with gratitude, that, but for this beneficent provision for the protection of home, not only their wives and children, but themselves also, would have no homes at all in which to abide.

Woman is the world's homemaker, and she ought always to be its home-

keeper, or, at least, the privileged and honored keeper of a sufficient area of mother earth upon which to build and, if necessary, maintain a home. The woman who would neglect her home and family for the allurements of social frivolity, or the emoluments and honors of public life, is not the woman whose name will occupy a place among the annals of the Oregon pioneers. If Napoleon had said to Madame de Stael that the greatest woman was she who had reared the best, wisest and most patriotic children, his famous answer to her famous query would have been divested of all its coarseness. Men of renown in all the ages have been the sons of public-spirited, patriotic, home-loving women. "All that I am I owe to my mother," said our illustrious Washington; and our martyred Lincoln, in speaking of the deeds of heroism that characterized the women who bore the soldiers who bore the arms in our civil war, said: "I go for giving the elective franchise to all who bear the burdens of government, by no means excluding women."

I would not have you think for a minute that wise women would lessen paternal responsibility in caring for the home. Man ought to be, and generally is, or is supposed to be, the home-provider. But that he has often failed to keep his part of the mutual contract, try how he may, full many a husband can testify who is now living on his wife's half of the donation land claim, which, happily for all concerned, was recognized by law as hers in the beginning of their married life, and which she has ever since refused to sell or mortgage for any consideration whatever.

I pray you to indulge me while I say that I have never yet met a husband who has failed to make himself an agreeable and respected companion to the wife of his bosom, the mother of his children, if she possessed, in her own right, the home that sheltered them. Nor have I ever known any woman of Oregon when so situated to be compelled to sue for a divorce on account of "cruel and inhuman treatment, making life burdensome."

Right here is a pointer for the relief of our overcrowded divorce courts, Mr. Governor.

That the donation land law has its abuses, we all admit. The tracts of land it donated were too large, and the temptations for girl children to marry prematurely to secure lands were too great to create always the happiest results. But the principle was all right as to equality of ownership, and ought, in modified form, to be revived and continued indefinitely, as it surely will as civilization progresses and enlightenment and liberty increase.

How largely the state of Oregon is indebted to the donation land act for the origin of the spirit of freedom, justice and patriotism that prompted patriotic women to send their sons and grandsons to face death in their heroic endeavor to "avenge the Maine"; how much the state owes, primarily, to that same patriotism for the promptitude of women in forming the Emergency Corps of the state, or becoming auxiliary to the Red Cross society, for the benefit of our boys in blue, or how far that experience has gone to

increase the zeal with which they now come knocking at the gates of state government for admission within its portals to seats of their own among the electors, where there shall be no more taxation without representation to vex the spirits of our lawmakers with its biennial protests, I am sure I cannot tell you. But I know, and so do you, Mr. Governor of Oregon, and these honorable gentlemen, that the spirit of liberty and patriotism, like that of necessity and ambition, is in the air. It cannot be longer restricted by the fiat of sex or suppressed by the fiat of votes. The women of Wyoming, Colorado, Utah and Idaho, today enjoy their full and free enfranchisement. The governor, the legislature, the judiciary and the men voters of all those states speak as a unit in praise of their women voters. And shall Oregon, the proud mother of three great states, in the youngest of which the women are voters already — shall she refuse, through her men voters, to ratify the honorable action of the legislative assembly which has given them the glorious opportunity to celebrate the dawn of the twentieth century by making it a year of jubilee for the wives and mothers of the pioneers, to whose influence the upbuilding of the state is, by their own confession, so largely due? Forbid it, men and brethren! Forbid it, Almighty God!

And now, as I close, I beg leave to present for your edification the grandest poem that, from the Oregon woman's standpoint, has ever been written by Oregon's greatest poet, Joaquin Miller.

THE MOTHERS OF MEN.

The bravest battle that ever was fought!
Shall I tell you where and when?
On the maps of the world you will find it not –
'Twas fought by the mothers of men.

Nay, not with cannon or battle shot,
With sword or nobler pen!
Nay, not with eloquent words or thought,
From mouths of wonderful men!

But deep in a walled-up woman's heart—
Of woman that would not yield,
But bravely, silently, bore her part—
Lo, there is that battlefield!

No marshalling troup, no bivouac song,
No banner to gleam and wave;
But oh! these battles they last so long—
From babyhood to the grave.

Yet, faithful still as a bridge of stars,
She fights in her walled-up town—
Fights on and on in the endless wars,
Then, silent, unseen, goes down.

Oh, ye with banners and battle shot,
And soldiers to shout and praise!
I tell you the kingliest victories fought
Were fought in these silent ways.

Oh, spotless woman in a world of shame;
With splendid and silent scorn,
Go back to God as white as you came—
The kingliest warrior born!

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